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JAMES V. GILES, ET AL, PETITIONERS.

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MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

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[fol 8] Swift of patients and person are part 4 [9-14] IN CIRCUIT COURT OF MONTGOMERY COUNTY

PETETION PURSUAST TO POST CONVICTION PRODUCTION ACT—Filed May, 11, 1964

Post Conviction Act, Md. Code Am., Art. 27 Sec. 654A, respectfully represent:

- 1. Petitioners are confined in the Maryland State Penitentiary at Baltimore, Maryland
- 2. A verdict of guilty of rape was returned against each petitioner in the Circuit Court for Montgomery County, Maryland, on December 5, 1961. Judgments on the vardicts were entered against them on December 11, 1961, in said Court, and petitioners were sentenced to death. The sentences were commuted to life imprisonment by the Governor of Maryland on October 24, 1963.
- that petitioners are imprisoned in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article 23 of the Bill of Rights of the Maryland Constitution, in that (a) petitioners' convictions were procured by testimony which was perjured, which the State knew was perjured; and some of which perjured testimony the State induced; (b) the State suppressed and withheld material exculpatory evidence and thereby was enabled to, and did, give at the trial a false and misleading impression of the facts; and (c) petitioners have been denied a reasonable opportunity to obtain a new trial on the basis of material exculpatory evidence which was discovered after their convictions and was not available to them at the trial.
- 4. The relief sought by petitioners is the setting aside of their convictions and their release from quatody, either absolutely or conditional on their being accorded a new trial

(a) Petitioners, having been indicted for rape in the Circuit Court for Montgomery County, were tried before a jury in said Court, Honorable James H. Pugh presiding, on December 4 and 5, 1961 (No. 4590 Criminals), and were sentenced to death on December 11, 1961. At the trial petitioners were, because of their indigency, represented

by court-assigned counsel.

L Petitioners are confined in the (b) Petitioners appealed their convictions to the Court of Appeals of Maryland upon the following grounds: (1) The evidence was not legally sufficient to sustain the convictions; (2) Petitioners were denied a fair and impartial frial because there were no Negroes on their jury; (3) The trial judge should have asked the jurors on voir dire, "Have any of you any hiss or prejudice against a defendant who is Negro when the complaining witness is a white woman: (4) Petitioners were denied due process of law when the jury exercised the flower given them by the Maryland Constitution to determine all the relevant Tegal principles as well as the facts of the case; (5) Petitioners were denied que process and equal projection by the failure of the trial judge to give the jury advisory instructions on any of the relevant legal principles; (6) The trial court improperly limited petitioners counsel in cross-examination and impendments and (7) The sentence was excessive it

(c) The Court of Appeals allitmed the convictions in an opinion filed July 18, 1962. Giles v. State, 229 Md. 370, 183 A 2d 359. A Motion for Reargument was filed August 12, 1962, urging reconsideration of the sufficiency of the evidence, and requesting the court to decide whether advisory instructions are required in a capital case when not requested of the trial judge. The Motion was denied on September 19, 1962, and at menorither votal guest of the

(d) Petitioners then appealed to the Supreme Court of the United States upon the grounds set forth as 5(5)(4).

and 5(b)(5) above. On April 22, 1963, the Supreme Court dismissed the appeal for want of a substantial federal question. 372 U.S. 767.

[fol. 10] (c) On November 16, 1962, petitioners filed in this Court a motion for a new trial based upon newly-discovered evidence. The motion was denied on November 20, 1962, upon the ground that Rule 567 of the Maryland Rules required such a motion to have been filed within three days after verdict. This denial was appealed to the Court of Appeals, which aftirmed the action of this Court on May 6, 1963. Giles v. State, 231 Md. 387, 190 A. 24 627.

(f) On October 24, 1963, Governor J. Millard Tawes commuted petitioners' sentences to life imprisonment.

At the trial, the principal witnesses against petitioners were the alleged victim (hereafter referred to as the prosecutrix) and her escort, Stewart Foster. They testified, in substance, that while they were sitting in a parked car on the night of July 20, 1961, the petitioners and another individual (Joseph E. Johnson, Jr.) approached the car, demanded Foster's money and the girl, and attached Foster. They denied that Foster had cursed and used racial epithets toward petitioners and Johnson prior to the alternation. The prosecutrix testified that she ran into the woods nearby; that thereafter the petitioners and Johnson had sexual intercourse with her, to which she submitted out of fear; and that she had not told petitioners that she was on probation or that she had had intercourse with sixteen other boys that week and they would make it an even twenty. Petitioners testified at the trial, in substance, that they and Johnson had peaceably approached the car; that they had not demanded the girl; that Poster provoked the altercation by cursing them and using racial spithets against them; that the prosecutrix had consented to having; and had invited patitioners to have, sound intercourse; that she had told them that she was on probation or in trouble, that if cought in the woods she would have to slain that she was raped, and that she had had intercourse with 16 or 17 other raped, and that she had had intercourse with 16 or 17 other boys that week and two or three more wouldn't make any difference. Petitioner John Giles testified that he had not had sexual intercourse with the prosecutrix.

The allegations of paragraphs 7, 8 and 9 hereof are

[fol 14] 7. The State instigated said Stewart Foster to testify falsely at the trial that he had not cursed petitioners and Johnson.

8. The following material testimony given at the trial was false and known to be false by the State;

(a) Testimony by Stewart Foster that he did not "cuss out" petitioners and Johnson or call them "black mother fuckers," and that he and a companion, George Trent, had their bothing suits in the car.

(b) Testimony by the prosecutrix that Foster had not used profanity to the petitioners and Johnson.

the prosecutive had not told him that only two boys had attacked her and that he had never talked to petitioners' mother and fathers. Less that related to petitioners'

9. At the time of the trial, the State was in possession of information and evidence, not then known to petitioners or their counsel, which materially corroborated this testimony of petitioners, materially discredited the festimony of the prosecutive and materially impeached her credibility. The State suppressed and withhold this information and evidence. Thereby it was enabled to, and did, create a ratio and misleading impression of the true facts and impute petitioners testimony. The facts circumstances and evidence so withhold and suppressed included the following:

ing our new of between but errors was pending against the transport the alleged rape, there was pending against the processor will the obverience Court for Prince Chargest Courty University that young clothety the brain is distinguished behalf beyond the control of her percent, and hopf

late hours. The State Department of Parels and Probation had recommended that the prosecutive he placed on probation. The evidence of these discumstances in the passession of the State included the charges and a report of the Maryland Department of Parels and Probation The documents are part of the records of the Juvenile Court for Prince George's County, Maryland, are not obtainable [fol. 12] by petitioners except by judicial process, and therefore cannot be attached hereto.

(b) About five weeks after her alleged rape by petitioners, the prosecutrix made irresponsible and unfounded charges that she had been raped on another occasion by other men.

(c) Prosecutrix was sexually promiseuous, habitually engaged in sexual intercourse with many men, including persons not known to her, and had frequently participated

in oral sodomy.

and proper.

Evidence and information of (b) and (c) in the possession of the State included a report of the Hyattaville City Police and an investigation report of Detective L. R. Wheeler of the Prince George's County Police. The originals of these reports are not obtainable by petitioners arcept by judicial process and therefore cannot be attached hereto. There is, however, included in the Appendix hereto a true and authentic copy of said reports.

(d) At the time of both the alleged rape and the trial the prosecutrix was mentally and emotionally ill and unstable. A psychiatrist and her family physician had diagnosed her as a juvanile schizophrenic in need of psychiatric care. On September 5, 1961, a hearing was held in the Juvenile Court of Montgomery County, Maryland (Case No. 1606-61), on allegations that the prosecutric was out of parental control and living in circumstances endangering her well-being and a necessary witness for the State in the arminal case pending against politiciners. Describe Lieutenant Bloyd M. Whelan, of the Montgomery County police department, who was in charge of the investigation

James V. files, John O. Files, P. Stioners,

of the alleged rape of the prosecutivity participated in this bearing. The Juvenile Court committed the prosecutrix to the Montrose School for Delinquent Girls, edl' acits

Information and evidence as to these matters appears, in part, in the records referred to in 9(a) hereof and in the records of the aforesaid proceeding in the Juvenile Court of Mentgomery County. Such records are not obtainable [fol. 13] by petitioners except by judicial process and theretherefore cannot be attached hereto, bedsetts ed tonnes erofered

- 10. More than three days after verdict, petitioners discovered evidence and information, not available to them at the trial of material matters which were exculpatory of petitioners and tended to corroborate their testimeny and to discredit the testimony of the prosecutrix and Stewart Foster. The evidence of these matters, if introduced at the trial would in all likelihood have resulted in an acquittal of petitioners. These matters included the following:
- (a) The matters referred to in paragraphs 8 and 9 ession of the State inchided a hereof.
- (b) That on the day after the alleged rape, Stewart Foster had given an account of the episode which was inconsistent with his testimony and consistent with the testimony of petitioners. coreto. There is, boyever, included in
- (c) That soon after the alleged rape, the prosecutrix made statements which indicated an insouciant attitude toward the alleged rape and tended to show that she had Stables of perchanting and her family
- (d) That the prosecuting was sexually promisenous to an entraordinary degree and manifested symptoms of

The the prosecutive was mentally ill and unstable.

The Stewart Fosten was a habitual brawler and a habitual user of professty, and wile language, especially toward Negroes, and archecing the epithet "mother fuckers." which petitioners instifled he had addressed to their prior to the alterestion.

[fol. 14] 12. The evidence of the matters, referred to above includes, but is not limited to, documentary material in addition to the transcript of petitioners' trial. Such of the said documentary material as is available to petitioners is attached herete as an Appendix, consisting of affidavits of John Patrick Stephens, Barbara Yoke, Baymond J. Dean, Jesse Dorough, Stephen Brooks, Edward Wilson, John H. Giles, Mary L. F. Giles, and Jacqueline Giles; a copy of affidavit of Barbara Yoke filed in this Court in support of the new trial motion referred to in 5(e) hereof; a true excerpt from the transcript of testimony of police officer John T. Kennedy, given on September 25, 1962, at the trial in the Circuit Court for Anne Arundel County, Maryland, Crimmal No. 6134, of Joseph E. Johnson, Jr., who was petitioners' companion at the time of the alleged rape and was likewise convicted of rape; a signed statement of George Trent; a photostatic copy of the Wheeler report, referred to in paragraph 9(b) hereof. Petitioners hereby verify that these documents are authentic and are what they purport to be it to to a lan entire at a year to inggette aller

Wherefore, petitioners pray:

1. That the verdicts, judgments and sentences entered against them be vacated.

2. That the Court order that petitioners be released from confinement absolutely or, in the alternative, that it order their release unless they are accorded a new trial within a stated, reasonable period of time.

3. And for such other and further relief as may be just and proper.

James V. Giles, John G. Giles, Petitioners.

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John P. Stephens, being duly sworn, deposes and says	2,55
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I. My same is John Patrick Stephens. I am 22 years of age. I am a Private in the United States Army, serial num	C)
her MA 18019 82, and entrently entigned to Co B, 5th BN	No.
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James V. Giles, John G. Giles, Petition

Maryland During the 1960-1961 and 1961-1962 stated your I attended Northwest bein Senior High Palacet is High state of the Maryland. While attending Northwestern I lived state of consina, Mr. & Mrs. Robert L. Stephens, 2403 Resource Lane, Hyattsville, Md.

principal witnesses for the State in State v. Gibs and State v. Gibs and State v. Gibs and State v. Johnson: Stewart is an old friend from Laurel, when I have known since we were both small boys. Joyce Belleris was a student at Northwestern at the same time I was and I knew many of the boys and girls from both Laurel and Hyattsville whom she also knew. Lateo know her repretation in both Hyattsville and Laurel.

for helligenence and fighting. But Stewart has a good side too. It always seemed to me that he felt inferior and at odds with the world, and that once he got started making wrong judgments, it was hard for him to change. Stewart is now married and living in New Jersey. The last time I saw him, in February 1963, he was trying to live decently. Around Christmas time, 1964, I saw Stewart's mother, and she told me he has a new baby boy.

A Joyce Roberts' reputation for chastity in Laurel and in Hyattsville is extremely bad. Stewart Foster, Jesse Dorough, Stephen Brooks, George Treat, Ralph Bennie, myself, and many other boys in Laurel and Hyattsville had samual relations with her on many opensions. Joyce liked to be the only girl to go, out with a group of boys, and to have intercourse with the whole group. I was vith Jesse Dorough one-time when he and I and Stewart had served pit across from Stewart's house on Samty Spring Road. On that occasion Joyce also had sexual relations with Stewart's younger brother. He was younger than Joyce. He had come over to see what was going on, and die invited him to get in the car.

Joyce preferred that we not use rubber contraceptives when we had relations with her. She said she couldn't get heart while attending Northwestern I lived tangent

into cars with people she didn't know. She would get into cars with people she didn't know. She drank with us. Sometimes over at the Mighty Mo Restaurant on Queens Chapel Road in Hyattaville she would offer to have sexual relations with any boy who would pay her \$5.00.

7. Joyce liked to boast about her sex accomplishments. I don't think she exaggerated. The last time I had sexual relations with her was in the back yard of my home. That was a few days, I think about four days, before she said she was raped by the Negroes. Stewart Foster told me that Joyce told him that she had had sexual relations with 15 boys in the last week. This was before she said she was raped by the Negroes that she told Stewart and he told ma

18. On several occasions I spoke with Stewart Foster about what happened the night of July 20-21, 1961, when he and George Trent and Bill Fellers took Joyce over to Rocky Gorge down Batson Road in Spencerville. Stewart told me that they had gone there for a nudist swimming party and a "gang bang". He told me he did curse the Negroes and call them "motherfuckers", and that the fight cause they asked for a cigarette and because they wanted Joyse. He told me he had some money with him, about \$15.00 as I recall, which he put in his shoe when he nam the Negroes coming. He said that the police told him to say that he didn't swear at the Negroes, and that later before the trial the State's Attorney told him to say that, and tald him how to answer many of the questions he would be saked. He also told me that the plain [fol. 18] alother officials who who took him to court—it may have been the states attorney or police—told him to play the girl up. When Lasked him if he didn't believe that Joyce had willingly had sexual relations with the Negroes, he Ist TNO RUE, For Sackson, South Cerolina. 1 greet in

at the home of my parents on Gornan Road, in Laurel.

said, "fuck that goddawn nigger, I don't care, I hope they hang him." Stewart usually won all the fights he got in and I think his pride was hurt that he didn't win the fight that night.

bad ed John Patrick Stephens.

Subscribed and sworn to before me this 28th day of March, 1964

Isabell E. Thomas, Notary Public

My commission expires May 3, 1965.

AFFIDAVIT OF BARBARA YORE—October 13, 1962

City of District of Columbia, ss.:

Barbara Yoke, being duly sworn, deposes and says:

- 1. I am seventeen years of age, and reside at 221 Rita Drive, Odenton, Maryland.
 - 2. I am personally acquainted with Stewart Foster, of Olney, Md.
 - 3. On July 21, 1961, the day following the attack upon Stewart Foster, accompanied at the time by Joyce Carol Roberts, on Batson Road, in Spencerville, Maryland, I was in the home of Stewart Foster and his parents.
 - 4. At that time, Stewart Foster related to me and to two members of his family what had occurred on the night of July 20, 1961.
- 5. The following is an account of what Stewart Fourier said had occurred. He and Joyce were parked on Batson Road, and some guys came up the road. Stewart had some [401.19] money on him, which he bid in his shoe when he saw them coming. They asked him for a dignitate, and he told them to "Get out of here." They left, and returned after several minutes, asking for thirty cents to buy a pack

of eigerettes. He then told them "Get the hell out of here, you niggers". Thereupon a fight started

the reputation for chastity of Joyce Carol Roberts, and he stated that he knew it to be bad.

Something over at the higher the fracts Barbara Yoke.

Subscribed and sworn to before me this 13th day of October 1962

Philip D'Andres, Notary Public.

(Seal) where, I think about four do P. before the roll

My Commission expires May 31, 1965.

AFFEMAVIT OF BARBARA YOUR OF JUNE 5, 1963

State of Maryland, County of Anne Arundel, ss:

Barbara Yoke, being first duly sworn, deposes and says:

- 1. I am eighteen years of age, and reside at 221 Rita Drive Odenton, Maryland.
- 2. I am personally acquainted with Stewart Foster, of Clary and Laurel, Maryland, who was a principal witness for the prosecution in the cases of State v. Giles and State v. Johnson.
- 3. I used to date Stewart Foster's brother, Billy, regularly for about a year, not bear the witness of the state of the st
- 4. Stewart need to work at the race track in Laurel.

 Maryland week hadwele tanoone has a privated and
- of the Rewards was quick tempered, frequently in fights or and was extremely loudlished) mouthed, particularly after drinking. He correct and mad professor profundly.
- of Stewart on one occasion got into a fight with Homer Willis, of Barbersville, Md. During the fight, Stewart

clawed Homer's face with a beer can opener, by that How was in danger of losing an eve bus

7. Stewart was very prejudiced against offered per and I have heard him use the expressions "black mot fucker" and "nigger." to not vecell tex exact wat ties when of

8. Stewart had a low opinion of the character for char tity of Joyce Carol Beberts, and I have heard him say, think I'll go over to see Joyce tenight and get a piece," and 'I'm going over to see the whore from Hyattaville," referring to Joyce is replient. No one good trust him.

9. Stewart lived for several weeks in Laurel, Md., with a girl who had run away from home, and whom he later turned in to the police after he got tired of her.

start a fight to show his girl how tough Barbara Yoke.

Subscribed and sworn to before me this 5th day of Jun 1963.

Wm. H. Tipton, Notary Public in and for the State of Maryland, A. A. Co. My commission expires May 3, '65.

Student Maryland, Prince Courges College, as AFFIDAVIT OF BAYMOND J. DRAN this swoin, deposes and eases

To Whom It May Concern And the Concern offine and reading the femile ? Inch

October 14, 1963.

My name is Raymond J. Dean, and I live at 4308 Farragut Street, Hynttsville, Maryland, and I own and operate the Charcoal Grill at 5616 Baltimore Avenue in Hyatisville In July 1961, my sestaurant was called Bayle Pis and Sandwich Shop" and it eatered primarily to teen agent Prior to July, 1961. I had known Joyce Roberts for assert months, as she frequently came into my restaurant. She [fol. 21] usually came in to be picked up by boys, and when this happened, she would leave my place with them. Or some occasions, she was unruly and I would order her b leave and stay out for a week.

In July 1961. I read in the papers that a girl had been raped by three Negroes and I learned from teen-age customers that this girl was Joyce Roberts. Within a week after I read about this. Joyce Roberts came into my restaunant again. I asked her a question about the alleged rape. (I do not recall my exact words, but it was a general question such as "What happened the other night Joyce!") Joyce Roberts answered that one or two more did not make that much difference to her. This statement was made by her in a flippant manner, which was her usual manner of speech.

Shortly after this, I permanently barred Joyce Roberts and some other rough teen-agers from my restaurant be-

cause they were constantly creating trouble. ne got tired of her.

Barbara Loke.

Cit. My conunission expres

Raymond J. Dean.

Subscribed and sworn to before me this 14th day of October, 1963.

Barbara, Toles Lewis E. Weaver, Notary Public. ublic in and for the State

A bustyreld of

AFFIDAVIT OF JE DOROUGH

State of Maryland, Prince George's County, ss:

Jesse Dorough, being first duly sworn, deposes and says:

My name is Jesse Edmund Dorough, I am 20 years of age and reside at Route 2, Box 229A, Laurel, Maryland.

I have been employed as a barber at Bart's Barbershop, in the Laurel Shopping Center.

A I am personally acquainted with Stewart Foster and Joyce Roberts, who were the principal witnesses for the State in the cases of State v. Giles and State v. Johnson.

Hol 221 4. I had known Joyce Roberts for about a year before her alleged rape by the Giles brothers and Joseph Johnson in Spencerville, Maryland on the night of July 20, 1961. carry and stay out for a week friendly to you. She wouldn't say something to him your feelings unless she got mad at you. She would sing vary well. She sang rock and roll songs and folk songs. But she always wanted to have sexual relations, and never seemed to be satisfied no matter how many of us boys she had relations with.

- 6. I have known Stewart Foster since I was a small boy.
- 7. I can't say anything good about Stewart Foster. He was just plain rotten. No one could trust him. Stewart liked to consider himself a tough guy, and always ready to fight. He habitually called people such names as "son-of-a-bitch", "whore-hopping-bitch", "motherfucker" and "coaksucker." He would say these things to provoke them. He would say them in front of a fellow and his girl to try to start a fight to show his girl how tough he was. I have heard him say these things in front of Joyce Boberts. Stewart hated niggers. I've heard him brag about beating up niggers in Baltimore. Stewart used to nag at niggers and do things to provoke them.
- S. The young men in our crowd who associated with Joyce Roberts knew her reputation for liking sex. I introduced Joyce to Stewart and personally told him that she would have sex with us anytime that we wished. The day I introduced Stewart to Joyce, three or four of us left the Laurel poolroom and went down to Joyce's house. We took her out in the car and all had repeated relations with her. That day we parked at the gravel pit across from Stewart's house on Sandy Spring Road and Stewart's next-to-youngest brother, about 13 then, came over to the car. Joyce asked him to get in the car and have some fun. Stewart said, "It's about time you were a man." He got in the car and had sex relations with Joyce. He looked sick afterwards.

[fol. 23] 9. The next day I went to see Joyce again and she told me that she didn't want any more to do with me.

. 0 .

that she was in love with Stewart Foster. I said, "Why, what can be do that I can't do?" She said, "He ate me." She saked me if I would engage in the same act with her that Stewart did and I said, "You're note"

If I was with a bunch of boys at Joyce Roberts' house around the 4th of July, 1961 when a firecracker was put in the Roberts family mailbox. Joyce's parents were not home. It was lafe at night. Joyce came to the door and said she was in bed with her boy friend and didn't want to see me. The boy friend was standing in the darkened hall leading to the bedroom. Joyce said, 'He has a gun and is going to shoot you.' I could see the gun. After some argument, he put down the gun and we all left. I called up Joyce's mother when she returned and apologized and offered to pay for the mailbox. They had already bought a new mailbox, and I never did pay for the one that was destroyed.

11. As best I can recall, I had sex with Joyce about two times between the time her mailbox was blown up and the night she was supposed to have been raped.

12. The night following her alleged rape by the Giles brothers and Joseph Johnson, I drove to Hyattsville and met Joyce walking on the street near her house. She called me over and said, "I got raped last night by two niggers." I said, "I don't believe it." She said, "Sure I did." But it sounded funny the way she said it and how she talked about it. I couldn't tell if she was pleased by what happened, or just didn't care. She never gave any sign that it bethered her. Later on that same night I picked her up further down the street near the little store and drove her to Blue Pond in my car. We parked and had sexual relations. At that time she told me, "Niggers are good," and that they were bigger and better than white, boys.

13. The first time I had relations with Joyce was about. Christmas 1960. I had bought her a sweater for a present.

14. Joyce once told me that she had an old man who paid her fifty dollars every time she went out with him, which was about once a week.

15. Joyce loved to drink Old Mr. Boston Sloe Gin and Pepsi Cola. She said it made a girl get hot.

16. One time before Joyce was involved with the Giles-Johnson case five of us boys took her to an apartment and stayed all night. We put on a phonograph record, and she did a strip tease show for us. After that we all had relations with her several times.

aligned work of paint averte if allesse E. Dorough,

Subscribed and sworn to before me this 27th day of December, 1963.

edil midtyna bevaded tadt A List Bates, Notary Poblica

My commission expires 5/3/65.

have sexual relations with any locality time he wanted to. On two occasions I saw her have sexual relations in an antomobile with each of \$107 \$ \$150 \$10, had secundarilations with her two times, once in an automobile, and once in her house on Orletherpe Street, in the first bedroom on the right hand side of the door as you so in her house. That

APPROVIT OF STEPRES BROOKS AT THE

State of Maryland, Prince Georges County, 88:

Stephen Brooks, being first duly sworn, deposes and says:

[Iol. 25] d. My name is Stephen Frederic Brooks. I am 20 years of age (DOB March 18, 1943). I am a Private El in the United States Army stationed at Fort Jackson, S.C. My serial number is RA 18 811 948.

- 2. I am personally acquainted with Stewart Foster and Joyce Roberts who were the principal witnesses for the State in the case of State v. Giles and State v. Johnson.
- 3. I have known Stewart Foster for about 15 years. I grew up in Laurel, Md. and went to school with Stewart Foster.
- 4. I first met Joyce Roberts in May or June, 1961. I was introduced to her by Jesse Dorough of Laurel. I first met her on a date with two other boys and one other girl. We drove to Foot Armstead, near Baltimore. I last saw Joyce Roberts in mid July, 1961.
- 5. Stewart Foster was no good at the time he was living in Laurel. He was always in fights. He usually started them. He was quick tempered. He was profane. He did not like colored people. He always tried to show people how tough he was. I have seen him slap a girl who was his date because she said something he didn't like, causing her to cry.

6. I have never known a girl that behaved anything like Joyce Roberts. She was forward about everything, particularly sex. For the few weeks that, I knew her, she would have sexual relations with any boy any time he wanted to. On two occasions I saw her have sexual relations in an automobile with each of 3 or 4 boys. I had sexual relations with her two times, once in an automobile, and once in her house on Oriethorpe Street, in the first bedroom on the right hand side of the door as you go in her house. That

7. Several of us went to Joyce's house on the fourth of July, 1961, to see if she would come with us. We went up on the porch and knocked on the door. A boy, about 18 or 19, who we didn't know, came to the door. All he had [fol. 26] on was his trousers. No shoes, stockings, or shirt. He said, "she don't want to see you." We kept on knocking. Then Joyce came to the door and said she was with someone alse and didn't want to have anything to do with us at that time. She said her parents were on a trip. Then the boy came back towards the door. He had a gun in his hand. He said for us to go away and threatened to shoot. Jesse Dorough who was with us told the boy if he didn't put the gun down he'd take it away from him and beat him up with it. There was some arguing. The boy put the gun down. After that we went away.

8. The first time I had relations with Joyce I asked her if I should use a rubber. She said no, that she didn't have to worry about getting pregnant.

9. I have seen a picture of Joyce lying naked on a conch holding a heer can to her hand. I have seen her engage in oral sex acts with boys. She used to drink with us at her house and when she went with us in the car.

Stephen Frederic Brooks.

Subscribed and sworn to before me this 27th day of December, 1963.

John Ida Fants / Amel Cabell E. Thomas, Notary Public.

My Commission expires May, 1965. The maintained at the

my heart couldn't stand it.

an to quorn a Armonymer, Lowen Windows around any State of Maryland, Prince George's County, se. and of these

Edward Wilson, being first duly sworn, deposes and says:

- 1. My name is Edward Amos Wilson, Jr. 1981
- 2 I am 27 years of age, and I reside at 419 Main Street, Laurel, Maryland.
 - 3. I am self-employed as a radio and T.V. repairman.
- A. I am personally acquainted with Stewart Foster, who was one of the principal witnesses for the State in the case of State v. Giles and State v. Johnson.

(fol 27] 5. I have known Stewart Foster for bout five

Government for the fights. He made trouble everywhere. He drank a lot. He was a "nigger hater." He always carried a knife and has been known to knife and cut people in fights. He was known to be a dirty fighter and I have heard him say that he always fought to win. He was a foulmouthed person. He would call anyone a "bastard", or "cocksucker" or a "mother-fucker", and he did it hoping you would take offense so that he could get into a fight. He always thought that he was the "badest" fellow in this town.

Edward A. Wilson, Jr.

Bubscribed and sworn to before me this 24th day of Dedember, 1963, and our ground or many han before me

Deniarly our. For the few weeks that I know hardely assisted

On two pressions I have been have several relations in an

My commission expires May 2, 1965.

Stephen Frederic Brooks, 19th

with her two times, once in an automobile, and once in her house on Oglathurpe Styret, in the first bedroom on the right hand side of the door as you go in her house. That

APPRAVIT OF JOHN H. GRANNER .. S.

John H. Giles, being first duly sworn; deposes and says

- 1. My name is John Henry Giles. I am the father of John G. Giles and James V. Giles, the defendants in the case of State v. Giles. a reversions ambust
- 2. I was present on the morning of July 21, 1961 at our home on Batson Road in Spencerville, Maryland, when Sgt. Harding of the Montgomery County Police said that the girl had said that only two boys had raped her the night before. Subscribed and sworn to before me this 23th day of Feb.

John H. Gilesoph

Subscribed and sworn to before me this 28th day of Feb., My. confinission expires May 2, 1965. 1964.

Nathaniel A. Miller, Notary Public.

. My commission expires May 2, 1965. has epigeb intown rish talk anied

[fol. 28]

Lear Mr. Krave

Md. Phone No.

ing [and a series of the country of Mark Gues of the country of the cou

Mary Giles, being first duly sworn deposes and says:

- il. My name is Mary Lucinda Frazier Giles. I am the mother of John G. Giles and James V. Giles, the defendants in the case of State v. Giles, and the life of
- 2. Several times on the morning of July 21, 1961, Montgomery County Police Officers stopped at our home on Batson Road in Spencerville, Maryland, in search of my sons John and James. One of the officers wanted to know if the boys had guns, and said if there were any trouble he would have to shoot them. I told the officer who said that not to shoot my own boy, right here on our own place, and that my heart couldn't stand it! Syall soriges noiseinmon yll

4. Sgt. Harding came over and put his arm around my shoulder. He said he knew we were good people, and that the girl had said that only two boys had raped her, so that one of the boys who didn't do it might be one of my boys.

out ma begin but sand out alm and Mary P. Giles.

Subscribed and sworn to before me this 28th day of Feb.,

Nathaniel A. Miller, Notary Public.

My commission expires May 2, 1965.

Nathaniat & Miller, Notack Publication

"migger hater Applicavit of Jacqueline Giles

Jacqueline Giles, being first duly sworn, deposes and

- [fol. 29] 1. My name is Jacqueline Roseanne Giles. I am the sister of John G. Giles and James V. Giles, the defendants in the case of State v. Giles.
- A Lwas present on the morning of July 21, 1961 at our home on Batson Boad in Spencerville, Maryland, when Sgt. Harding of the Montgomery County Police said that the girl had said that only two of the boys had raped her the night before.

sons you to do more ni beneficial, Macqueline R. ! Giles. 10

Subscribed and sworn to before me this 28th day of Feb.,

of fact thill bree on Nathaniel A. Miller, Notary Public.

My commission expires May 2, 1965 gate t'abluon trand you

EXCERPT FROM TRANSCRIPT OF TESTIMONE OF DESERVE JOHN T. KENNEDY, AT TRIAL OF STATE V. JOSEPH E. JOHNSON, JE., CRIMINAL No. 6134, CIRCUIT COURT FOR ARME ARTH-DEL COUNTY, MARYLAND, SEPTEMBER 25, 1962

"Q. Did you examine this car, Detective Kennedy, that was on Batson Road? A. I looked in it and at the windows. I was around it and near it, as to what type of an examination you mean, and on the manufactor was and

"Q. And you didn't find any bathing suits in the car did you! A. No, sir." (enon single and a lyarviand

STATEMENT OF GRONGS TREET Consensation

The transferred by the life tennales are Details of Case (in Full)

abmet of lovestigation

TEMPORY TO LEVELS

April 7-64

Clothing.

O.M.

Dear Mr. Knapp:

On Saturday, August 20202381, at any I did have did not have way bathing suit with me when I went to Batson Rd. with Stewart Foster, Bill Fellers, and Joyce Roberts on the night of July 20, 1961. party Joyce Roberts was pushed into the hathroom by a

Altanera george M. M. approx. 30 years old. "Phere was a

Dave said thanks for the book is slow has parameter to tol As she came out of the bethroom, a John L. Sullivan,

known as "Smooky", asked her what the trouble was and [fol. 30] ed broken and wild chargen care ale tach herein and

tamele line tuels a Hyarisvinas Cry Police od rad east blace into the front yard, he pushed her to the ground and pro.

ceeded to rape betrockers REPORTed agar at bebeen Roberts, Jovee Carroll -- W/FAG (Daughter Visag addies

Type Case: Rapel carls at histoger sand sid? [18.101]

Complainant: John Boberts Drive Calverted 2008 at 18 at 1900 a

Address: 3803 Oglethorpe St., Hyatts., Md. Phone No. WA:7-8491 m Date 9/1/61 Time 8:30 A.M. adolf anyole.

Place of Occurrence: 56th Ave., 5400 block, Edmonston. Md. Phone No.

Date of Occurrences August 26, 1961 Time 11:30 P.M.

Reported by: Marion Edith Roberts Add.: 3803 Oglethorpe St. Phone No. WA 7-8491

Victim: Joyce Carroll Roberts, 3803 Oglethorpe St., Hyatts., Md. WA 7-8491

Scars or Marks (If none write none)

Clothing

Belationship to Complainant: daughter

M. O.

18 T ling A Details of Case (In Full)

On Saturday, August 26, 1961, at approximately 11:30 P.M., Joyce Roberts and Nancy Coleman, (W/F/16—address unknown) went to a party that was located in the 5400 block of 46th Ave., Edmonston, Md. While at the party Joyce Roberts was pushed into the bathroom by a Alten Hamilton, W/M, approx. 30 years old. There was a lot of screaming and hollering coming from the bathroom. As she came out of the bathroom, a John L. Sullivan, known as "Smooky", asked her what the trouble was, and she stated that she was raped. He then asked her if he could take her home. As they started out the door and went into the front yard, he pushed her to the ground and proceeded to rape her. There was approximately 30 persons at the party.

[fol. 31] This was reported to Mrs. Roberts by a Robert Bostic, 3906 Calverton Drive, College Park, Maryland, who received the information from Joyce Roberts, at the hospital, on Angust 30, 1961.

Joyce Roberts was put in the Hospital on August 27, 1961, approximately 5:30 A.M., and is now held for a mental patient.

(This was reported to P.G. Co, Det. Wheeler, who is working on the case.)

(Joyce Roberts is in P.G. Hospital, due to overdose.) of it was the fact that the control of the control

10 The Cold Bode of the bettern and of Col. K. Moureau Omear A 12.5 All the Analytic Analytic

house belond the shed pagety and

so Replement in The Telephone in the Control of the REPORT OF INVESTIGATION OF DETECTIVE L. R. WESSLES

> PRINCE GROBGE'S COUNTY POLICE Prince George's County, Maryland

REPORT OF ENVIRONMENT OF THE PROPERTY HAVE

Report made by Detective L. B. Wheeler. Subject of Investigation well-strate need Suspend sail to vired avoi Bape had ole asiteoup at their

Initial or Supplementary: Initial. M. T. C. II viorannicana CRB No. 138284 account notificially to any bus saythbs DB No. 17608 one Advent better wild railed that he ore 8000 and

Status of Investigation: Closed Unfounded. not willing to do this at this view but offere Complainant:

other than removing his trusts from her both Boberts, John, 3803 Oglethorpe St., Hyattsville, Maryland Wa 7-8491 we will have the son the south free Lot to glade the criminal officer's apport is disputed insured

Roberts, Joyce Carroll - W/F/16 (Daughter to the complainant), 3803 Oglethorpe St., Hyattsville, Md on and and

Date, Time & Place of Occurrence

August 26th, 1961 about 11:30 P.M. at 56th Ave. (5400 Block), Edmonston, Maryland tell the other boys at the pairtined all his [fol. 32] Accused:

See action taken.

The undersigned was contacted by Chief Silas Dennis of the Hyattsville City Rolice Department in reference to this case on September 1st, 1961 at 12:45 in the afternoon. At this time the known facts as stated in the original officer's report were given to the undersigned. At 3:40 P.M. on September 1st, 1961 the alleged victim in this case was interrogated by the undersigned in the presence of the nurse in charge of the wing—on A Wing in Prince George's Hospital. At this time this victim was being held in A Wing-Prince George's Hospital for mental observation as she had allegedly attempted suicide in the early A.M. of August 27th, 1961. At this time she stated that she had had sexual intercourse with the subject Alton Hamilton named in the original officer's report on several occasions and had been perfectly willing in doing so. She stated that on the night in question she had been to a party at the home of one Glen Hubert Boyles O Skip-W/M/38 at 5206 46th Ave. Edmonston, Maryland & while at the party at approximately 11:30 P.M. she went into the bathroom at this address and the subject Hamilton followed her in shutting and locking the door. She stated that he proceeded to have sexual intercourse with her at this time and that she was not willing to do this at this time but offered no resistance other than removing his hands from her body-several times. She then stated that after this she left the house at 5206 46th Ave. and the subject John L. Sullivan (mentioned in the original officer's report) followed her outside of the house behind the shed nearby and proceeded to have sexual intercourse with her lying on the ground. She stated that she was not willing at this time to have this relationship but she again offered no resistance. When questioned as to why she offered no resistance she stated that she would have voluntarily had intercourse with both of these subjects but she thought if she did so at this location they would tell the other boys at the party and all would want to do this. mental putient.

Soc action taken.

[fol. 33] The alleged victim Joyce Roberts admitted during this interrogation that she has had numerous acts of sexual intercourse with many boys & men many of whom were unknown to her of the last two years. She also admitted to numerous acts of oral sodomy with several boys. She stated to the undersigned that if these two subjects (Sullivan a Hamilton) were charged with this offense of rape she would refuse to testify against them.

Complainant (the father of the victim) was advised of the information obtained in this case and was advised that he could charge both of these subjects with Contributing To The Delinquency Of A Minor. At this time he stated that he would just as soon forget about it as his daughter was being committed to the Heuse of Good Shapherd in Baltimore, Maryland, and he did not wish to pursue this investigation any further.

6: That the State of Maryland Oxides the aller Statement

This case will be marked closed unfounded that at benial

Detective L. R. Wheeler 10-18-61.

Wilson J. Purdy, Commanding Officer. Oct. 20, 1961.

IN CIBCUIT COURT OF MONTGOMERY COUNTY

Answer and Motion to Dismiss-Filed May 19, 1964

Comes now the State of Maryland by James J. Cromwell, Deputy State's Attorney for Montgomery County and answers and moves to dismiss the Petition herein exhibited against it for the following reasons:

1. That the said Petition does not allege facts sufficient to show that the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of this State.

[10] 84] 2 That said Petition does not allege facts sufficient to show that the Court was without jurisdiction to impose the sentence & some directions at sentence of

3. That said Petition does not allege facts sufficient to show that the sentence exceeds the maximum authorized ivan & Hamiltoni were charged with

E That said Petition does not allege that the sentence is otherwise subject to collateral attacks upon any ground of alleged error heretofore available under a Writ of Habeas Corpus, Writ of Coram Nobis or other common law or statutory remedy. To The Delinetteney Of A Minor.

5. That the matters and things set forth in said Petition have been previously and finally litigated or waived in prior proceedings including the proceeding resulting in the conviction.

6. That the State of Maryland denies the allegations contained in said Petition, besole hedrom ad I

Wherefore, the State of Maryland does request the Court to deny the Petition for relief filed herein under the Post Conviction Procedure Act and to dismiss the Petition herein:

James J. Cromwell, Deputy State's Attorney for Montgomery County, Maryland, AXEWER AND MOTION TO DRESSESS Willed May 19, 1964 1181

against it for the following rensons: "

in effered no resistance. When ques lust the said Petition does not alloge finds anticiont; to chem that the sentence or judgment hear imprised in violation of the Constitution of the United States or the Constitution or laws of this States and its send ranto bullillat

Comes now the State of Mary hand by James J. Crom. well Bergiry State's Atterney for Montgomery County and answers and pioves to dismiss the Petition percip exhibited [fol. 23] m, James and the John son leword . 1M va PETITIONER'S EXHIBIT 1-EXCERPTS FROM W ORIGINAL TRIAL OF CASE OF SAN I A

JOHN BOWIE, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon Q. Do you see his brether in Court today A. He is sitting beside him. & Arab moda lang ?

dant. John Giles.)

was with your

and of the report and the color

Direct examination valled asob last roles and .Q.

or all the first termination with the first termination of the first te By Mr. Cromwell:

- Q. Give the Court your name please. A. John Alphonso Bowie, Jr.
- Q. Are you employed, Mr. Bowie!
- Q. Where do you work! saidt tog nov bib omit tadW .D ...
- A. M. A. Oland & Son.
- Q. Is that in the sod business?
- A. Yes.
- Q. I call your attention to the day of July 20, 1961, do you recall what you did on the evening of July 20, 1961
 - A. Yes, sir.
- Q. Would you tell the Court and the ladies and gentlemen of the jury, exactly what that was!
- A. O.K. It was on the evening of the 20th, I got off from work. I was working for Mr. James Earle Lyons at that time. Myself and James was going swimming.
 - Q. When you say "James" whom do you mean?
- A. The Giles boy, that was working with me at that time. [fol. 24] Q. Do you see him in Court today!
- A. Yes. He is sitting right there (indicating the defendant, James Giles). went in to the ator

By the Court: of hiew bus died ones ow would bus

- Q. What kind of a coat has he got on !
- A. It looks to be black.

Holl & By Mr. Cromwell attition does not allega fulfill doll

Q. What happened after you got off from work?

A. I had to go home and pick up my swimming trunks and I went to my house and got my swimming trunks and came back and then went to his house to pick up his swimming trunks and at that time we picked up his brother.

Q. Do you see his brother in Court today?

A. He is sitting beside him.

Q. What color coat does he have on!

A. It looks like tan. (The witness pointed to the defendant, John Giles.) By Mr. Cromwell

Q. What happened after that?

A. He went on down to the river and went swimming.

Q. Where did you got

A. To Batson Road where Rocky Forge picks up.

Q. What time did you get there: Nirow nov ob ared W

A. I imagine about six o'clock.

Q. Day or night? [fol. 25] A. Evening.

Q. Is that area where you went swimming in Montgomery

A. M. A. Oland & Som

s that in the sod business?

A. It was in Montgomery County at one time and then it was in Howard County at another time.

Q. Is Batson Road in Montgomery County!

A. Yes.

Q. How long did you stay there, swimming !

A. Oh, we stayed there about an hour. bus linavid and

Q. All right. What did you do then!

A. Then we decided to leave and just as we were leaving I said it looked like a nice place to go fishing and the Giles boy said "Let's go fishing then." A. Yes. Ho is sittin

Q. All right what happened then?

A. We went up to the store and got a six-pack of beer and then we came back and went to dig some fishing bait to go fishing with and we went on down the river fishing.

Q. At the time you went down the river fishing, who was with you! fooks to be blacks

- A. John, James and the Johnson boy, all tadd at balk . O Q. Just you four! abetail abstack to make at the diant? And A. That's right. Q. Was it your car you were using? amination). A. Yes it was my car. [fol. 26] Q. Approximately what time did you get back to this spot to go fishing, if you remember? A. It was just about dark. Q. What happened after that? A. We went and fished for about an hour and a half to two hours. Q. What happened then? A. We came out from the river and we were walking up the road and we saw this car sitting there. Q. Where was your car parked with reference to the car you saw parked? A. My car was parked heading towards the water coming in down Batson Road, just before you get to the gate. Mr. Cromwell: We offer these five pictures as State's Exhibits 1, 2, 3, 4 and 5. At this time we will only refer to State's Exhibits 3 and 4 second your ass. Doy of Mr. Prescott: No objection, was do bas fing a was I The Court: Admit the five pictures into evidence. Q. I refer to State's Exhibits 3 and 4. Can you identify these pictures? Q. Did sither an inc triba boys A. Yes. I can. with the people in the car! [fol. 27] Q. What is that picture marked State's Exhibit #41 A. This picture shows coming into Batson Road, down
- towards the water.

Q. Is that looking up from the water?

A. This picture was taken looking up from the water.

Q. And I show you State's Exhibit #3 and ask you whether you can identify that picture. a you get a pitted mort

A. Yes that picture was taken facing the water; going to the water. I de tank clambia without fabling I.A.

A. Straight through; that is Batson Road new land Q

(Mr. Cromwell handed the pictures to the jury for examination), to my hom tantau olew a

Q. Beferring to State's Exhibit #4, can you indicate on that where your car was! Hold it up so the jury can see it.

A. My car was approximately right along in there.

Q. And which way was it facing?

A. Towards the water.

Q. All right. What did you do after you returned to

your carf

A. Put the tackle in and I told them to watch me, so I wouldn't back into the ditch or the car that was sitting up [fol. 28] there at the time and they got out and was watching and I backed on back and backed past the car.

Q. De you know what kind of car it was that was up the road odd on the nov enelse

A. I know it was a Ford, but I don't know exactly what year it was. I didn't pay very much attention to it.

Did you see any people in it has a statistical states of

I saw a girl and a boy. ' monday do we special all

At the time you passed that car, did you have any versation with the people in the carf

No: I didn't say anything to either one of them.

Q. Did either of the Giles boys have any conversation with the people in the carf

An They were talking, but I couldn't say whether they were talking to the people in the car, or amongst each sectors shows coming into listson Hoads dranto

Q. Where were they standing, with reference to the car you passed he where I take well ment que anched take a

A. One was standing on one side to keep me from backing into the ditch and one on the other side to keep me from hitting the boy's car big test glithobines no

A How close were they standing to the boy's carf

A. I couldn't exactly estimate that.

Q. What happened after that the and and and an interior of the Chot

A. I drove on up the road and turned around and asked [fol. 29] them if they were coming with me and they said no, they would walk across the field.

Q: What happened then the your and to nomething bus

A. I drove up to the top of the hill and I stopped and went back down and asked them to come on with me.

Q. Why did you do that?

A. I don't know. I wanted to go somewhere, and I was sleepy and wanted somebody to keep me awake.

Q. All right, what happened then?

A. I backed down the hill and at this time one of the boys came up and said they were going to walk on; they didn't want to go anywhere else and so I pulled on off and I ran off the road and like I said I was sleepy and I decided I just about as well take a nap instead of going all the way back to Mt. Zion, and at two o'clock the police officers come up and woke me up.

Q. At the time you came back the second time to pick them up, did you have any conversation with them?

A. I just asked them if they were going up the road with me.

Q. What if anything did they say?

A. They said they weren't going right at the time.

Mr. Cromwell: You may cross-examine.

Mr. Prescott: I have no questions.

[fol 30] STEWART FOSTER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

the total transfer I

Direct examination.

By Mr. Cromwell;

Q. Will you tell us your name, please? shall that A. A. Stewart Foster.

Q. Where do you live! retaining the beacons I and W. O

A. Box 2303 Sandy Spring Road, Olney, Maryland.

Q. Directing your attention to July 20, 1961, and to the evening of that day, would you tell the Court and the ladies and gentlemen of the jury, what you did on the evening of July 20, 1961 and Hill add to tests add to to prove the had an

A. Well I had a date with Joyce and I went down and that ob por bib vilW O

picked her up:

About what time! og of battley I apound track I A

A. It was around 10:30 when I picked her up as versals

Q. Day or night! A ned bone grad hadw their HA . O

A. That night and we talked to a few of her friends and we were supposed to meet them up at the Rock on Batson Road, Montgomery County, and we went on up there and when we got there we found some people up there that was hung an incalditche was present less and and steel I

were back to Mil Ziem, and at two large dim saw od William

[fol. 31] A. George Trent, Billy Fellows, Joyce and my-O. At the time you caree back the second time to the

Q. Approximately at what time did you arrive on Batson Road off and chief larger well the north feeles, build A.

out diw

A. I guess about 11:30.

Q. Where were you riding in the car! Home histad W. O

A. I was in the back seated the assessment hims we'll also

Q. And where was Joyce riding in the car?

A. She was in the back.

Q. Was anybody else in the back!

No wants in the day

Q. What did you do when you arrived there!

A Well we helped these people that were hung up in first been duly sworn, according to ried red rewriter Do

A. Right on Batson Road; right at the end.

Q. I refer you to what has been marked State's Exhibit #3 and admitted into evidence as State's Exhibit #3 and I sak you if you can point out on that picture where the other car was that you helped?

A. Right there temper plant they an iled for HiW. O A. Stewart Poster.

Q. Point that out to the jury.

(The witness holds the picture up and indicates a spot to the jury had I ban rue out of awol betrate year of A

Q. Do you know the people that were in the other car [fol. 32] A. No, sir.

Q. What happened after that?

. Well, we stayed there and talked for a few minutes and watched for our friends to come up and they didn't come, so we started to go back home, and we got to the top of the hill and ran out of gas and we drifted back down and asked them if they would take us to get some Q. Who did you ask? stade moth state this hearth and

A. The other two couples we helped out of the ditch.

Q. What happened after that?

A. Billy and George went to get some gas.

Q. How did they go?

A. In the car we helped to get out of the ditch

Q. Approximately what time was that?

A. It was close to midnight. Q. Then what happened?

A. We pushed his car on off Batson road, on to a little dirt road that runs down to the river, and Joyce and I stayed there while they went to get gas, and I heard this noise behind us and I looked behind me and these guys were putting some fishing gear, it looked like, in the trunk.

Q. How many were there?

A. Four.

[fol. 33] Q. What happened then?

A. They got into the car and started backing out and I asked them if they had enough room to get by and one of them opened the door and looked and said, "Yes, we have got plenty of room" and they backed on up to the hard surface road and stopped for a few minutes and three of them got out and the other one drove on up to the top of the hill and the three that got out came back down to us.

Q. How far was it from where their car stopped back

was a bloom

down to where you were! A. I don't know. I was so seawed and

A. Fifty feet.

to All right what happened then It abled asouthward T)

A. So they started down to the car and I locked the doors and I got a little bit shaken up.

THE WORLD THE STORY TON

A. Well, I don't know; three subjects getting out of a car and coming down towards us, and I didn't know what ras going to happen, just Joyce and I there by ourselves.

Q. Were there any lights in that area?

No just the lights on that other car.

Q. Were there any houses in the area that you knew

A. About fifty feet from there, right off to the other end of the road; so they came on down to the car and asked me for a digarette and I said I didn't have any and [fol 34] then they said they wanted my money and I said I didn't have any money either.

Q. Were your windows open or closed at the time they

O Then what harmoned

came down to your car!

A. I had a crack in it. what thine was the description of

Q. In which window to the table of or all saw !!

A. The right rear window. A. The right rear window.

A By the right door.

there while ! Q. At that time was Joyce still in the back seat?

thesa Rive

Qu What happened after that I wilde a mos guitting stew

A. Well the car backed down off the hill and they walked back up and talked to the guy that was driving the car and then the car pulled on off and they came back down and walked past the car and I could hear this mumbling and they came back up and said they wanted the girl.

What did you say!

A And I said "You aren't going to get the girl" and they said "Well I will kill your fucking ass," and I heard a brick go through the window and one of them said "Let's shoot the son-of-a little

. Q. What did Joyce Roberts say during this!

A. I don't know. I was so scared, and I said "Joyce, Q. Point that out to the jury.

make a run for it and I will hold them back as long as [fol. 35] Lean." on by myself and all I thought at

Q. After the brick hit the window, what happened then?

A. I jumped out and somebody threw a rock and smacked me right beside the face with it and it knocked me out for a while and when I come to, I looked up and somebody put a club up against my head and said "I want your money."

Q. What do you mean by a club!

A. It was about sixteen inches long, and about this big around lines evidence, Claudavella covequal, Well, the officers went to therether Ila. Our

A. So he held it up against my head and took my wallet and my money. The table of sead tell some

Q. How much money did they take? of Madil bas sonsladings

A. I only had twenty-five cents in my pocket.

Q: What happened then

A. They walked behind the car and I could hear this mumbling and they started on up through the woods and I jumped up and hollered to Joyce and said "I will get some help" and I went on up to this house and knocked on the door and I was all full of blood and shook up and the lady looked at me and she called her husband and he came down the steps and he looked at me and he called the police, and I turned around and started back down and at the same time the police got there and we heard the guys running off through the woods.

[fol. 36] Q. Did you hear that yourself! and bad is

bAd Yes. Theard it is no on you and a real year

Q. Tell what happened then.

A. The officers and I walked up into the woods and found the girl laying there and all she had on was her blenegation nev leading it asked now that our Joyce in the woods, did you know where shifting tadw. Q.

bas Joyce Boberton will he unimost took toni I .ov A

QuiWhat was her condition? Wash and blues I through I

A. She was kind of whimpering and her legs were all scratched up and she was in pretty bad shape.

Q. How was she dressed that pool of bloost is framit tant ta

A. All she had on was a blouse.

Q. Did she have anything else on besides the blouse! A. Norhay started down to his our and I Moked Individon

Q. Where were her other articles of clothing to watth O'.

A. Lying a few feet away from her one two benfaut I .A.

Q. Did she have any shoes on !

A Notale and which I come to I had an a side base with the

Q. What type of area was it where you saw her!

A. It was about twenty feet off in the woods from the I k was about struct leader louis and about stude saw il A

Q. What happened after that!

[fol. 37] A. Well, the officers went up there and she was laying there and we helped her up and she put her clothes on and we took her back to the car and they called the ambulance and they took both of us to the hospital.

O. Can you identify any of the three men by sight whom

you saw come up to the car that night? beasagast ind W .Q

A. I cannot identify them; no. denimal post of the

Q. Can you describe them! no betrate rest has uniduators

A. When they backed up and turned the lights on I could see that they were four colored males and all young looking. They looked like about nineteen to twenty years object of the and shakes and belles sale has and of below

Q. What happened after the ambulance arrived?
A. They took us both to the hospital.

What happened to you at the hospital? willow out entit

A. They had to put eight stitches in my mouth.

Q. What had happened to require that!

A. When these guys hit me up on the side of the head with a brick was nothed on all contillagramment today for the

Q. Where did it strike you!

A. Right on this side of my face out on and him sait brush

Q. At the time that you have testified you hollered to

Joyce in the woods, did you know where she was 1 194 0

A. No. I just kept hearing all the noises up there and I thought I could hear her voice a few times. I was shook anyway and a little scared or white of buil saw and A

[fol. 38] Q. Why didn't you, yourself, go into the woods at that time! know I was so a thomserhads asserted by

All she had on was a blomed.

A. Well they had messed me up once, and I couldn't handle all of them by myself and all I thought about was calling for some help. I was scared anyway.

Q. At the place where the car was parked and where you subsequently found Joyce, was that in Montgomery

County

A. Yes, sir.

Q. I show you pictures which have been marked State's Exhibits number one and State's Exhibit number two, and admitted into evidence. Can you identify either or both of these pictures!

A. Yes, sir; that is the car I was in but and well Q

Q. Referring first to State's Exhibit number one, and I will turn it up so the jury can see it-can you indicate where you were seated in that car! and mitab asw I A

A. Right at the back door idad a salam lin nor bid. O Q. And is that roadway under the car called Batson Roadf Mr. Cromwell: Objection:

A. Yes, sir.

Q. Where was Joyce seated in that cart

A. She was right beside me, in the back.

Q. Referring to the right rear window and the right front window; do you know what caused them to be broken? [fol. 39] A. They were broken by rocks and stones thrown by these guys. The read to Georgia distribution and the second

Q. What was the condition of those windows before these three men came up to your cart i mo new its asynt

A. Perfect. There wasn't anything wrong with them.

Q. Was the car locked before they started to pick up bricks! day why the reduced read the black sill doll

Anyes, siret becomus rewisers and sound wolf Q Q. I refer to State's Exhibit #2 and ask you whether you can identify that I put of another inder erow ered W . O

A. Yes, It is the same car, not is burnstifting and day A

Q. Did you get out of the right rear door of the carf A. Yes sire atjust unintell and work and is and the C. .

Q. Where did you lay on the ground?

A. Right there, where that pool of blood is in pad 1 .A

Q. Did Joyce have here with her? A. I guesa she did, but'I don't know.

evening?

Q. Can you identify that as blood which came from you? bandie all of them by myself and all I thoughts A. A.

four subsequential found found found

the volume of the contraction

Bonder Carried Carried World World

Mr. Cromwell: Cross-examine him. caling for somewhalles

Cross examination.

By Mr. Prescott:

Q. You say this was your automobile? [fol. 40] A. No, it was George Trent's.

Q. And George drove it out there!

A. Yes, sir.

Q. How long had you known Joyce Roberts?

A. I don't know. It was a right good while.

Q. How often did you date her?

A. I was dating her regular.

Q. Did you all make a habit of going on dates, starting at 10:30 in the evening?

Mr. Cromwell: Objection. Judge Pugh: Over-ruled.

A. No. I was just a little late getting down there. George first went to pick his girl up, and I was late getting to Joyce's house,

Q. Was George's girl friend with you on this occasion?

A. No. She couldn't come.

Q. So you and some other guy named Billy Fellows, and Joyce, all went out to this spot in the woods; is that right?

A. We were supposed to meet some of her girl friends.

Q. Who were they redt stoud bedder 185 s

[fol. 41] A. I don't know their names.

Q. How do you know you were supposed to meet them?

A. We were talking to them after I picked Joyce up.

Q. Where were you talking to them?

A. At her girl friends' house. I don't know their names. I know them to see them, and to speak to them.

Q. Did you all have your bathing suits with you that villally on the ground evening!

A. I had mine in the car, and George had his in the car.

Q. Did Joyce have hers with her?

A. I guess she did, but I don't know.

there and co: swimming.

- Q. You said you went out there to go swimming, didn't you to the stand out there to go swimming, didn't
 - A. That is what we were planning on doing. and in tawa

Q. Why were you back so far from the river

- A. Because we ran out of gas. That is why we parked awolle's at ble work. there.
- Q. You said you had gone down and then driven back he didn't ser sorthung. They ere blow up here.
- As We waited for them and they didn't show up, and we started back home a cant mad established
- Q. Your car was parked right at the end of the pavement wasn't it' i brane deem to meet denie was rew meet

A. That is right.

[fol. 42] Q. And you saw this other car was parked in a ditch there?

- A. Yes. ve and you did notice () . Lewison Q. And I guess you parked your car in the ditch, didn't vont
- A. No. We parked right at the side of the ditch and helped them get out of the ditch.

Q. Isn't that in the ditch, where your car is sitting?

A. No.

Q. How wide is that road there?

A. It is wide enough for two cars to pass on.

Q. What happened to George Trent and Billy Fellows that evening!

A. They went to get gas.

Q. Where did they go after they went to get gas?

A. I don't know. They didn't come back. I asked them the next day why they didn't come back, and they said the people who were taking them wrecked their car.

Q. Where!

A. In Laurel both to boost at whether the robiness no V. O.

Q. They had to go all the way to Laurel to get gast

A. Yes; No gas stations were open at that time.

Q. And George just left his car out there with you and Joyce 1

A. He was coming back after he got the gas.

[fol. 43] Q. Did he ever come backt

A. I don't know because I wasn't there. They took us . away in the ambulance manaler or six our today at fail 1984.

Q. How old is George Trent's sand nov army v. W.

A. Twenty was tas's and to too not ew aspend A.

Q. How old is Fellows?

A. Nineteen, or twenty, ob ange had nor him ye

O: How old are you!

A. Twenty-one subth washing a mail not believe by

Q. What did you three boys take Joyce out there for that night Las to the aft to trials bufries and to mot Q

A. I told you we were going to meet some friends up

A. That is vights because

there and go swimming.

Q. You didn't take her out there to have sexual relations. with her, yourself, did you?

Mr. Cromwell: Objection. Judge Pugh: Over-ruled v boling nov seeing I bad O

No. We parked sight at the side of Q. You say you saw these three boys, or four boys, putting tackle in their carl an applicable and all .Q

A. Yes.

Q. How far was their car away from your cart

A. I don't know. It wasn't too far. descons alice at Il. A.

[fol. 44] Q. It was a right dark night, wasn't it!

A. Yes, but his lights was on his car. The headlights was on and the tail light was shining.

Q. This was a heavily wooded area, wasn't it?

A. Yes, sir; to the right of us it was.

Really on both sides it is heavily wooded, isn't it?

A. Well it is kind of thick on that side because it grows up in honeysuckle.

Q. You wouldn't say there is woods on both sides

A. Further down, yes, but there is mostly honeysuckle A. Yest: Norganishatlans mere coordal that

Q. At any time did you ever hear Joyce scream, or holler out?

A. I think I heard her voice a couple of times.

Did Love have been with her? I guess she did, but I don't know.

Q. You didn't hear her calling for help, or scream A. No. sir. Tagar legels no alregel rage! . rie of A. A. I just heard that whimpering noise of tay but. Q. Q. You told her you were going for the police told have A. Yes, I called out to her that I was going to get some help. Q. She didn't tell you to hurry up, did she! A. No. She didn't say anything. Q. Do you recall telling these boys that there were three other boys with you, rather than two? [fol. 45] A. No. I didn't tell them anything. Q. You remember cussing them out, don't you! A. I did not do that. Q. You didn't call them "black mother fuckers!" A. No, I did not. Q. Are you sure you didn't say that (a see noedomu. I) A. No. I know better than to say something like that when there were three of them against me. 3 41 174 101] Q. Had you been drinking on this occasion? A. No. having first been duly sworn, alcording to la Q. Nothing at all noon avoiled as beditset bus benims Q. Had Joyce had anything to drink! minuse tootil. A. No. at time o'd Son every Q. What time did you say you arrived out there? A. I said it was close to midnight. Q. What time did this happen, that these boys came up there?

A. Just around midnight. I don't know exactly what the time was.

Q. Did you say you fellows got out there and sat there for a little while and then drove up again?

A. We started back home and ran out of gas, and we let the car drift back down.

Q. How long did you all sit out there before you started fol. 46 back home or year Yallian gainer

A. I don't know. Thaven't the slightest idea. We were talking together! sir! Give se your name and address

A None of you went down toward the river, did you!

A. Normir may because I was a't there. They about but

Q. And yet you went out there to go swimming?

A. That is right treet to others were ved blot no? O

Mr. Prescott: I have no further questions.

The Court: Is that all?

Mr. Cromwell: That is all, your Honor.

The Court: You may step down.

The Court: During the recess, ladies and gentlemen, you will not discuss this case among yourselves, or allow anybody to discuss it in your presence. We will recess for luncheon until 1:30 p.m. Is there any request to have the jury locked up, gentlemen? Mr. Prescott: No, your Honor. and Mandahib water Q

. A. No, I did not.

(Luncheon recess) and yes rabib nov ords nov or A. O

A. Not. I know better than to say something like that [fol. 47] Dr. Sidney Leventual, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

> Direct examination of guidisms bad would ball it wasn't ido bat.

Torse By Mr. Kardy on vast my bile smill faul W

Q. Doctor, would you state your full name?

Q. What is your profession! described banois taut. A

A Physician at most than heavily worsted any a nich end

Q. How long have you practiced medicine?

A. Twenty-three years, good for a lide of the cold of

A: I was a graduate of the George Washington Univeraity School of Medicine in 1938, three years of internship and residency training, military service and practicing in Silver Spring since 1946. don't known I haven't the

O. Dectar, directing your attention to the date of July

21, 1961, at or about 2:30 A.M. did you have occasion to examine Jocye Roberts on alleged rape!

A. Yes. The second second polygon was at last to O.

Q. Tell us what examination you made on Joyce Roberts

and what the results of that examination were, sir.

A At the time I examined her, she had been in the [fol. 48] Sanitarium for about an hour then I believe. She had abrasions, that is, scrapes of the skin over her shoulders, her knees and her legs. There were fragments of earth and leaves that were adherent to the back part of her body. We did an internal female examination on her and the secretions in the vagina at the time and they were found to contain numerous spermatozos cells. Mr. Kardy: Your witness.

Cross examination vov bit neitanimeza tadW. O

By Mr. Prescott: Haddel a bad ad banel 1 .A

Q. You don't know what caused these abrasions and scratches, do you doctor to alkest the it stade but O [fol. 49] result of your findings!

were the results.

CON TEMPORARIES

A. I don't remember the number

A. I do not.

Mr. Prescott: Nothing further,

Mr. Prescott: Nothing further.

Judge Pugh: What time did you examine her!

A. 2:30 A.M.

(The doctor was excused) to their their their they noted and

Dr. Dan Devruss, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

[fol: 48%] Direct examination.

By Mr. Cromwell: 48 your homes

Q. Would you identify yourself for the record, please sir! Give us your name and address.

A. My name is Doctor Dan DeVries and I live in the Washington Sanitarium in Takoma Park a gyool agimaxa

Q. What is your occupation!

A. I am an interne in Washington Sanitarium.

Q. And what is your educational background?

A. I took my medical training in Holland. I am a graduate doctor in the Netherlands, and I took my examination in order to take an internship in the United States.

Q. Are you taking an internship now?

A. Yes, I ame of instable

Q. Directing your attention to the day of July 21 of 1961, did you have occasion to examine a man by the name of Stewart Foster Lagorenvious and land also

A. I do not remember the name, but if that is the redheaded man who was with the girl in the rape case, yes I didincheon conser.

Q. What examination did you make on him, and what were the results.

A. I found he had a laceration of his upper lip on the left outer side

Q. And what, if any, treatment did you give him as a [fol. 49] result of your findings?

A. I sutured the laceration. I stitched him.

Q. How many stitches were required to close the wound on his facef

A. I don't remember the number.

Mr. Cromwell: You may cross-examine. 101500 and

Mr. Prescott: No questions.

Mr. Kardy: May the doctor be excused?

The Court: Any further use for the doctor, gentlemen?

I was a graduate of the George Washington In wersity Believe of Medicine noithnimusis transfer of highlight) and residency fraining military service and precising in

Mr. Prescott: No.

The Court: Doctor, you may be excused.

Silver Borner since 1946. Howmon) .TM va

O Would you stendily yourself for the record, please sir! Give us your name and address:

JOSEPH S. CUNNINGHAM, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon you, or later than y A. He west before nie.

O. At the foot of the drivewaynoitemimaxe Tool od that

appear to you, sign sign do may bilt nida atma By Mr. Cromwell: ambanta ran collog A .A.

Q. Mr. Cunningham, would you give us your name and [fol. 50] your address, please.

A. Joseph Cunningham, Batson Boad, Spencerville,

Maryland.

Q. Mr. Cunningham, directing your attention to the day or the night of July 20th, 1961, in the early morning of July 21, 1961, did there come a time when someone came to your house that night? A. When they first came into a

A. Yes, sir.

Q. Do you know who that person was f

A. I didn't know at the time.
Q. Did you answer the door yourself?

A. Yes, I did.

Q. What was the physical appearance of the person who came to the door, to the best of your recollection?

A. Well physically the sight of his face was somewhat bloody. I couldn't tell from what source, but it was covered . with blood.

Q. Do you recall approximately what time of the day or night this was?

A. It was around two o'clock in the morning, as I recall it

Q. Did you have a conversation with him at that time; did he say anything to you?

ambulance

A. Yes.

Q. As a result of that, did you call the police! [fol. 51] A. Yes.

Q. Did you subsequently leave your home? A. Yes. C. Mr. Commangham, could you told any Art

A. No. Sir.

Q. Did you walk away from the car benegated hall O: A. The driver backed up ground and went merthadirt w.Q. Waydid you run from beats sould red to eat bas back 19 A Because I saw them use their violence on the car and I was afraid they were going to do the same thing to to the driver and he drove on off and they came back dem Q. How were you dressed as you ran through the woods? The A at had on shorts and a blouse bias aw bus about a mail to Q. Did you have on any shoes the two pages and the ther told Breaking Roster that they wante kniessoo Mer And Q. What happened as you ran through the woods? A. I ran about thirty feet I guess, and I tripped over something and fell down and I was cont of breath and couldn't run any more, and so I tried to lay there and be as quiet as I could but one of the colored men found me. Ifoh 611 Q. Do you see that man in the court room today. that found you said said that he this appoint to he as a prov fe A. Yes, sirous. Ibesu vent abrow ent era esod T. O : Q. Will you point to him, please? A. That one with the light colored jacket on. (The witness pointed to the defendant, John Giles.) | haweld. A Q. Was this a heavily wooded area; and was it lit or militi has abad mod blod of an danowad has pur of cit A. There is no lights at all, and there was hardly any moon and very little light. You could see where you were going but not much light, and it is very thickly wooded To Do you know of any houses around there! know what they enged afterwards, bearing stady and Q. Did you see any houses with lights in them? I have sweet going to try to hold them back while I got away aok akhe Q. When John Giles found you in the woods, what was your position the medit of white long was east result thek . A. I was laying down to do of the car when the last O. And after the window was Imidat Bayward 1960. A No. to run for it? Q. Did he find you the locked and the windows Yuk's O. What did you do! n.Q. IWhat happened when he found you, Joyee 1000 I A

A Well I was laying there and he leaned over on top of me and the other two boys had sticks and the [fol. 62] beating around in the woods, trying to find me. and they were whistling to each other and calling back and O. Why did you do that!

1 Q. Did John Giles say anything to them? 10000 key I .A.

A. No. I told him to be quiet and not call the other two. Q. What did he do? heasen bauota unibasta sondt Ha staw

A. He said he wanted to call the other two same could be

O. Did het sammas of reasons and manuscrib of the have.

O. Did them someon time winers has of the three of the

Q. Was there any conversation between you and John Giles before the other two came over!

A Not that I recall would be been a shad been made if the

Q. What happened when the other two came over [1]

A. John Giles and I got up and started to move

Q. Why did you start to move! alsvirage and tag all A.

A. I tried to convince him that he should let me go further back so the other two men couldn't find me and he A. The smaller of the three boys retal am added and all . A

Q. Why did you tell him that I with a statistisser boy off Q

A. I thought if I could get further away from him I could get away from all of them tavily sid tig ed hid .(4

Q. And is that when the other two found you?

The Time and opening the best of the course with the

Q. What happened then to draw one anish some to deep

A. They all leaned around me and they were kissing me [fol. 63] and everything, and one of them reached for my zipper. All I was there and we widelife some now acheron.

Q. You say John Giles found you first and you pointed him out. Do you see in this court room one of the other two that came there when you were in the woods? who well nestaved there with monder about heaver Acc

a Q. Will you point him out ? We broad a may then and only

A. The bey in the dark jacket (indicating the defendant, pebee or get half and below I could say any

Q. Proceed with your testimony as to what happened when all three of them were there in the woods with yo

130. Where did you got has a har more will be arrased

A. To the foot of the driveway has an normanimara and

Q. Did the person who came up to your house go before you, or later than you! We share to come wants on beduse!

A. He went before me perional, as a round

Q. At the foot of the driveway what did you see; what did you observe! the Netherlands and I took me extent

A. A police car standing there with its headlights shining on another car, a sedan, which was facing in the fopposite direction.

Q. Did you see any people!

A. Shortly thereafter a police sergeant and the boy who had come to the house and a girl came out of the woods on the opposite side of the road.

Q. Approximately how far were they from you at that

timet

A. When they first came into sight it would be probably twenty-five feet, and they passed within maybe four or five feet of me.

Q. Is that spot which you have just described in Mont-

gomery County !

A. Yes, sir. [fol. 52] Q. What is the condition of that area with reference to lights!

A. There are no lights...
Q. After they came into view, what, if anything, did

they do!

A. The Sergeant was helping the girl and he took her up to his police cruiser and had her sit on the back seat of the cruiser while he got on the radio and called for an ambulance.

Q. Did there come a time when an ambulance came?

a A. Yes, sir.

Q. Approximately how long afterwards was that!

A. Ten to lifteen minutes, perhaps.

Q. And were the boy and the girl taken away in the ambulance!

A. Yes, they were.

Mr. Cromwell: Cross-examine.

omit had in the date had bone red land Cross examination.

By Mr. Prescott: vidla sida il illewmonth then

Mr. Pescott: No further questions. Q. How did the girl appear to you, sir; did she appear The Court: Any further use for Alla ta que court:

Mr. Prescott: No.

Mr. Cromwell: I object. The Court: Over-ruled between of vant seY into O on'T.

A. Do you mean physically! Q. Physically or mentally; either one. Hold 1084 3 2770

Mr. Cromwell: He certainly cannot testify to the mental state. I object. ned as follows, won

The Court: Just describe the physical appearance as von saw it. Direct examination.

A. She walked out of the woods, with the Sergeant assisting her, and walked across to the car, where he told her to sit down in the car. She was not hysterical if that is what you mean.

Q. Did she appear to be disturbed in any way!

A. I don't know if I can honestly answer that. To me there was not an immediate obvious sign of disturbance, but I am not qualified to judge that.

Q. Did she appear to be cool, calm and collected

Mr. Cromwell: Objection. The Court: Over ruled of noting the new authorities Que

sould not one of contract and the sections. Show A. I would say yes.

Mr. Prescott: That is all. toy winded being by taking build ove now bill denistabill ther

Redirect examination CO O TO CO A Mode Ambient the road towards Laurdraningwood of .O .

By Mr. Cromwell: Start Faster also dishing

[fol. 54] Q. Mr. Cunningham, could you tell from your observation what the state of her mind was at that time! A. No. sir.

Q. Could you tell from your observation and what you saw what her emotional state was at that time?

A. I don't think I can say that about anyone.

Mr. Cromwell: That is all.

nd von see anv

Mr. Prescott: No further questions.

deMr. Cromwell! May Mr. Cunningham be excused? The Court: Any further use for Mr. Cunningham?

Mr. Prescott: No. a reday, who post he I ofference halfe-

The Court You may be excused halos 1970 11500) ad I

Force Casor Roberts, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon The Courts' Just describe the physical appearance

Direct examination.

A She welled out of the woods, with the Sergrant as

[fol.55] Q. Would you state your full name, please?

A. Joyce Carol Roberts.

Q. Where do you live bedrataily ad ut assente ada bitt ()

e.A. 3803 Oglethorpe Street on nes I if word I not I .A.

tiQ. Hawold are your loves do staibeman na ton san et elt A. Sixteen or onto the that the sain a meetric A. A.

Q. When were you sixteen? loos ed of range and bit!

A. Last February H. Pring gons gift

Q. Directing your attention to the date of July 20, 1961, did you have occasion to see one, Stewart Foster, on that datef

A. Yes, sir. come a time of the large trail.

A. I'd say about 9:30 or 10:00 o'clock man beathart

O. In the evening Language Declaries

A. Not were the boy age the water Author to

Q. Did he take you anywhere!

Well he was supposed to be over about 7:30 or 8:00 o'clock and we were supposed to go out, but he was late.

The boy that he had with him and the other two boys want to see another girl and se they came up to my house after that and we decided we wanted to go swimming and we want to some girl friends' house and there were two boys and another girl and so they told us that they would drive up there later.

[fol. 56] · Q. Where were you going to go swimming!

A. At Rocky Gorge.

Q. Is that off Batson Boad!

A. Xes mostly with a new back ment selfor attly And

Q. Did you proceed in a motor vehicle with Stewart Foster to Batson Road?

de Xes nor drift attill set to depend the new barth artist

Q. Who else was in the car with you fall the halfed

A. George Trent and Billy Fellows

Q. Where were you sitting and where was Stewart Poster sitting! then so by identified and base travets on bus solant

A. In the back seat.

Q. What time did you get to Batson Road!

A. About 11:00 or 11:30.

Q. What happened when you got to Batson Road?

A. When we come down the road there was a car over to the side, stuck in a ditch, and the boys in our ear got out to help get the car out of the ditch and when they had finished the people stopped and the kide were all talking to each other and we waited around talking to them for a while, and it was getting pretty late and our friends hadn't shown up yet, so we decided we had better go on back and see if we could find them, and so we drove about half way up the hill, up Batson Road, and our car ran out of gas, so we coasted the car back down the hill and there was the [fol. 57] other two couples in the other car and they said they would help by taking the boys to get gas and the other two boys then got in the other car with the two couples and they drove up the road towards Laurel to get gas.

Quand that left you and Stewart Foster alone in the carf Wint did you do!

A. Yes, med the door on my sub! and got out sad I han.

The hard had grant of gast die bad ad tadt vod of T a Q And where were you sitting when they left to get gas! went to some girl friends house and ther desdent at lays o O In the left real book scatt can, os bun his servous bus Ar You epots: No further questions. Q. And Stewart Foster was on your right? teriner use the Manian remained. A Q. As you were sitting there, what happened? A. The other car had been gone about fifteen minutes: I guest; maybe not that long, and we heard car tires in back of us slightly and we turned around and there was a car sitting down at the end of the little dirt road we had pulled off on and there was a lot of lights and they were opening the trunk to put something into the trunk and the doors were open, and we saw that there were four colored males and so Stewart said that he thought we ought to lock fol. 581 the doors. Q. And did he look all the doors to voy behamit tan W. Q About 11:00 or 11:30. A. Yes. Q. What did he do with the windows ! read Hernised the windows up! ayob emon aw mid U. Q. Did the four men you saw down there come up tobarils your earfone matth did no too eat lest gled of the A Well the driver of the car got back in and he backed the car up the dirt road and the other three walked and they came up and we asked if they had enough room to get by and they said yes and they went on past. Or Did you stay in the car when that was asked? of the Hill at Halson Boad, and our est rail out que the we cossied the car back down that med beleson w. Que bias Stewart saked them if they had enough room. Q. Was he inside or outside of the car when he asked two bors then got in the other car with the two cutaits made they drove up the road towards Laurel to get collect A oQ and the doors were locked and the windows were rolled shut?

A yell he was supposed to be over about 1.30 gy 840 most had we ware supposed to go but but he was late

Q. What happened after the car went past!

A. The driver backed up around and went up the dirt road and the other three stood there and they eaked Stewart if he had a cigarette and we told them no, and then [fol. 59] they walked back of the car and said something to the driver and he drove on off and they came back down and said that he had left them there and would we give them a ride, and we said it wasn't our car, and it was out of gas anyway and we didn't have the keys, so after that they told Stewart Foster that they wanted his money and he told them he didn't have any money, and then they went behind the car and said something to each other and then came back around and they said that they wanted his girl, and he said that they couldn't have the girl and then they said "Well, we are going to get her" and he said "You are going to have to kill me first" and they said "We can drag your assout of the car." ta ways the troy band tant.

Q. Those are the words they used?

A. Yes, sir. the other samely antique through the

i QaWhat did they do seeles thall add thirw and tail'I

A. Stewart just sat there and he told me if they tried to get inte the car that the only thing I could do was to try to run and he would try to hold them back, and if they did get in I should get out the other side and run because there were three of them and they were all three on his side and after a few minutes I saw well they broke the glass in the back window. They used a rock and I don't know what they used afterwards, but they broke the windows out and opened the door and Stewart told me he was going to try to hold them back while I got away and as he [fol 60] got out of the car I got out my side and ran.

Q. Did Stewart use any profanity to them! seesing allow

A. No. sir.

A. I was laying down. Q. And after the window was broken, Stewart told you to run for it 1 on the dark party fundioning the wife lang.

A. Yes.

Q. What did you do for the viscons as to what all where

A. I opened the door on my side and got out and I ran.

O. Did to find your

A. One of the boys reached for the sipper in my shorts and I said "No" and one of them said "Either you do it or we will do it" and so I said "I will" and I took my shorts and my underpants off. Therefore a feed and the see war and described

Q. Why did you do that?

A. I was completely dated. There wasn't anyone to yell to for help; there wasn't anything I could do, and they were all three standing around me. tohed bib lad W.

Q. Did you scream 1 Hand flashed halanwood him all fa

A. No, there wasn't any sense in screaming.

Q. Did there come a time when one of the three had intercourse with you leted water armine and a service to the

Q. Who was the first one to have intercourse with you! [fol. 64] A. John Giles to all the for harbarren had if the

Q. What did he do with his private parts from the stand the same

A. He put his private parts in my private parts.

Q. After John Giles had intercourse with you, who was the next one that had intercourse with you fait os wood and

A. The smaller of the three boys.

Q. Do you recall his name thad and flat gov blb vel W . O .

I Ad Johnson and souther the blind I divide and I I a

Q. Did he put his private parts in your private parts!

A. Yes, six now bright own radio will distribute in bride O Q. Who was the last one to have intercourse with your

A. James Giles, the one right there, because of the delay

Qo What did he do with his private parts ! He was!

and everythis private parts in mine interests bus (2) for

Q. Are you sure of that I want to the me and the me and

O You say John Giles found you first and you to And 7. Q. While his private parts were in you, what, if any thing happened but ni erew wor when the benedged guith

A. Well he stayed there with me for about five or ten minutes and then I heard Stewart Foster-he was down at the case and I heard him yell that he was going to get the police or get help and before I could say anything he said Holistiche ares going to runs I heard him running. He said he was going some place up the road, and in about an-

other five minutes we saw headlights coming down Batson Road and we saw it was a police car, and all three born got up and went down through a path in the woods.

O. The three boys ran, did they I no though any sund W. Dans

L. We went to the Rockville detettion quarte 80 X mAh

Q. And what did you do! had them to the side

A. I just lay there. I didn't know what to do the bit!

Q. Did you scream then they many days to xis sal .A

A. No. I was crying, and Stewart came up to me and the police officer came up and they helped me on with my clothes and helped me down to the police car.

Q. After you got down to the police car, what happened

then?

A. He asked my name and address and then he called the ambulance.

Q. And then you were taken to the Washington Sanitarium Hospital? Q. And that is the defendant seated i

A. That is right.

Q. After you were treated at the hospital, where did you go from there!

A. We went to the Glenmont police station.

Q. At the Wheaton-Glenmont Police station did you see James Giles at the station? O. When did they kides you he [fol. 66] A. Yes, sir.

Q. Tell the Court and the ladies and gentlemen of the jury the circumstances under which you saw James Giles at the Wheaton-Glenmont Station, on the early morning Can't Don't lead the witness.

of July 21, 1961.

A. Well I was there and we went through our they interrogated us and found out what had happened the night before and then the next morning they asked me if Leould identify any of the men and I said "yes" and they took me to a line-up of six men and asked me to point out if there were any of the men there whom I had seen the previous night and I picked him and the other boy. Johnson, out.

Q. You picked out James Giles and Johnson! A. Yes. of heart born forton grew up researchine lessing and

Thereafter on July 23, 1961, did you have occasion Road and we sattle was so police to sail redtons sw bas about A. Yesberta wall ministrate dispositif awald these has questing Q. Where was that and what did you see in the line! A. We went to the Rockville detention quarters, in the in I was or aplated reased . The bound hill make bake Q Q. Did they have a line-up there? I small value of they A. Yes, six or seven men were lined up to hot bid Q . Did the police tell you who to pick out in that line-up! e police officer come beginning the balled on the officer [fol. 67] Q. In the line up on July 21st did the police tell ven got down to the police two soid of our nov A. No. Q. In the line-up on July 23rd, who did you see in that A I saw John Gilek of stoles orogo mor mort bar. O line-up? . Q. And that is the defendant seated here! A. Yes, sir. Q. Getting back to the early morning of July 21, 1961, did either one of these defendants here, either John Giles or James Giles, riss you! twomnest and want of the Yes, sir. James (idea at the etation to an

Q. When did they kiss you!

While they were having intercourse with me.

Q. Did they use any contraceptives!

Mr. Prescott: I object to these leading questions. 911 · The Court: Don't lead the witness.

Q Do you recall that they used any contraceptives if benedgan ban tany the buyer contraceptives if

niry, the circum

Q. Did you at any time while you were in the woods call these boys over and ask them to have intercourse with your [fol. 68] A. No, sir.

Q. When you were sitting in the car and these three boys broke the glass in the car what, if anything happened to the glass as far as you were concerned? and in those we

A I was sitting on the far side away from the window and when they broke the glass, it shattered and cut my leg.

Q. What if anything did you do with your dothes that you took off after they said they were going to take them Q. And he was due there at what time?

A. I don't recall. I just laid them to the side.

Q. How were you dressed that evening when they were down on top of your sw falls vise nov bloom aneit (05-lat)

A. I just had on a blouse.

Q. Did you have any pants on 108:0 10 08:01 11 40 W

A. No.

Q. Did you have any moccasins or shoes on the off

A. Well I did at first but I don't know what happened to them. Mr. Lardy: Ublection.

Mr. Kardy; Your witness.

the interpretation of the been paid Cross examination.

By Mr. Prescott: que en soie of empe real L.

Q. Carol, how long have you known the boy you were out with that night Foster? when at onew ow here usted it [fol. 69] A. About five or six weeks and were axis P. O.

Q. How often had you been out with him !

A. Every night for about three weeks.

Q. How old is Fosterf same to get gas, with the carbinost

A. Twenty-one.

Q. How old did you say you were! now hid steady the A. Sixteen. The old now said to be virtue now smit and

A. Sixteen.

Q. Who were these other two boys that were with you!

A. Two friends of his. 10 you show to soon war, IV lot

Q. How old were they of mor mon it is in an work .O to the beautiful that you to his march and

A. I don't know.

Q. How long had you known them to have not if Q

A. They were just casual acquaintances w . xnon un tind

Q. Where had you met them that ingreated ingreated .A

A. One of them was dating a very close girl friend of mine. A. I wouldn't say for sure

The Lourt: Sustained.

A. About 11:00 or 1

evening f

"Q. What time did you my you left home that evening! and when they broke the glass, it shooled want tood & A.

100 And you had a pre-arranged date with Foster!

in A. Your sire of the world bills your rest for done they Q. And he was due there at what time?

A. About 7:30 or 8:00 dt haid that I dear t'ach I' A Q. And if I told you he said it was 10:30 when he got [fol. 70] there, would you say that was wrong! got no noob

A. No, sir. police tell you wantedld a un bad take the for Q. Was it 10:30 or 9:30 when you left home that evening?

A. Tam not sure: The transfer and did the profess. Q. Do your parents let you go out at any hour of the A. Well I did at first but I don't lolot team nov thais

Mr. Kardy: Objection. The Court: Sustained.

Mr. Kardy: Your witness. Q. Did all three of the boys come to pick you up that evening!

A. They came to pick me up, yes, sir,

Q. And you went out with three boys in the car?

A. They were supposed to take me down there with Foster and we were to meet our friends than that div two

Q. Take you whereI here xiz to will mod A. A. [100 Jo]]

A. To Batson Road time trook any back and be wolf .() Q. What time did you arrive at this place on Batson Road! A. About 11:00 or 11:30.

Q. Where did you go between the time you left home and the time you arrived at Batson Road?

A. Astually no place. It takes that long to get there from

[fol. 71] my house.

A. Two friends of his. Q. How far is it from your house to Batson Road! As I couldn't say for sure a have in count d'aufill who's

Q. If you went directly out there it wouldn't take over half an hour, would it lieupen laneas sauf days works hale

A. We went through Laurelan that more had and Had O Q. Even going through Laurel, it wouldn't take over an hour, would it?

A. I wouldn't say for sure.

Q. What did you do in the meantime to pad may offe Qua A. We didn't do anything. maredwanter fours, larl . Area Q. Did you have any bathing suit with yould noY . On A. My girl friend had it in her oar, evan L. A. [27 Lot] A. Supposed to be coming up to meet us with a world Q. Why didn't you take it with you? A. Because it was at her house because her over! O Q. And you didn't pass by her house on the way! A. No. and this light to be relief addity in Q. What time of night was it when these boys actually showed up there at the car on Batson Boad of nov. A. About 12:00 o'clock, the same to the rid and Q. And you were there with them from 12:00 until 2:00 o'clock in the merning! A. I guess I was not still becaused the voy of the voy of [fol. 72] Q. You don't know how long you were there with them! If transland odt is guivisiser lieger one wold Q in this case in avery service as the contract of . A. Q. What happened during all that time you were there with them fast executions of each aschalast desiration of Org A. You mean the colored ment constant had avoid ozents to Q. Xee filt said say that interment was the thinke Xi.Q. A. As I stated before they were parked down at the end of the road. Our car had run out of gas and the other two boys in our car had gone to get gas, with the car that was already there. Q. What happened to these other two boys that went off to get gas! Did they ever come back! A. No. sir. Q. Where did they go; do you know! A. I don't know,

Q. Did you ever talk to them afterwards, to see what happened to them?

A. No.

Q. Have you ever seen them since? Thosand all tarks

The Court: Over-rule

Mr. Kardy: We object. The Court: Reframe it, Mr. Prescott.

A. No.

Q. Do you know where they live! the war had an War A. In Laurel somewhere. galdtyna ob tubib oll .A. Q. You have never seen them since, or talked to them? [fol. 73] A. I have seen them but I didn't have a chance to talk with them. In the absent being again any and W. Q. Q. Never discussed this case with them !! beauque A : A. Not if I said which with hour of W. O. Q. Have you discussed this case with anybody else! A. With the State's Attorney and the police. Q. With Poster! 9 30 when who had been come that when he AuNo avod sand neaw it saw thain to sand tadW- O Q. You haven't discussed it with him since? Low brands A. Briefly. A: About 12:00 o'clock. Q. Have you been out on a date with him since? A. Yes. p'elock in the morning? Q. You all haven't discussed this matter at all? the North Have now man been long you were the Nation Q. Now you recall testifying at the preliminary hearing in this case? we to pick me up, year cit. O. What had out out the had the had the before of the W.O. Q. Do you recall telling the Court there that only two of these boys had intercourse with you the nest not A A. I recall saying that intercourse was had three times. Q. Did you fell them only with two of the boys? rain I was confused the mre had not red hear article bus [fol. 74] Mr. Kardy: If Mr. Prescott is going to impeach the witness with testimony given at the preliminary hearing, I think the proper way to do it is to read the record. Mr. Prescott: I don't have a record of the preliminary

Mr. Prescott: I don't have a record of the preliminary hearing. I only have what information I could get from the attorney who represented these boys and no longer represents them. I certainly think I should be able to—

The Court: You may recite it the best you can.

Mr. Kardy: We object to that. It would be hearsay as to what Mr. Prescott heard from another attorney.

il wonking to take over her

The Court: Over-ruled.

Mr. Kardy: We object.

The Court: Reframe it, Mr. Prescott.

A. Yes. | wor bib two relied to meete tabib no Y. O. [fol. 76] Q. And you were confused at that time and you later learned that they all had names and then you decided

later learned that they all had names and then you decided that all three of them had intercourse with you; is that correct?

A. No.

Mr. Prescott; It it pleasether Court vord of ris, ov. A. Mr. Kardy: Let's approach the Bench, Mr. Prescott, if

you are going to make a statement.

60

Bench Conference - The Land Date The Court: Beframe the question. det him have a littlet Do ve [fol. 78] Q. Joyce, have you ever been in this area before with Poster I wintil an evaderable to a country begulated and to A. Yes, sir. Q. How often had you been out there with him before ! Q. Hew long were you and I ha there woist tnode od Q. What had you gone ant there for on those occasions? Mr. Kardy: Object your Honor. salmaint net go attal belse The Court: What is the materiality? A. We didn't talk Q. Were you ever out there in the daytime thom no Y .O. A. Yes, sir.
Q. And had you ever seen the Cunningham home when you were there! it is a ward time and I ubib all (0 [08:101] A. No. sir. by the tien they got based bill, not quithent. Q. Why hadn't you seen it! A. I didn't look for it. journ Halanalimar block of bid . Opo-Q. Well it is right there, isn't it! a no prival saw all A. A. I don't know. I have never seen it. 1919 nov bill .Q. Q. You still haven't seen it I man that to mustyma to med A. No, sir ands also at any during dabili have by Line Q. And the reason you didn't call out was because you didn't know anybody was around? ... waw you in alagurts to A. It was a most desolate area at a unitant anget must have Q. When Foster told you he was going to call the police [fol. 79] what, if anything, did you say to him to the A A. I didn't say anything of viridt mode saw tent but O Q. You didn't urge him to hurry up; or anything of that naturel was tradition on the new further trade of the Q But you didn't call out to him to say anything, nor call for help? Section of the sectio Q. You didn't tell him what was happening to you! P A. No, sir; he knew what was happening to media weld believed A. No. sir.

Q. Now Joyce, when this boy John first found you, didn't you tell him if he would help you get away that you would let him have a little? Do you remember that? [10], 78] Q. Joyce, invenyou eyer been in thiring and redere

Q. And did you plan to let him have a little, if he helped youf

Q. How often had you bean but there with himse ON LA

Q. How long were you and John there before these other two boys showed up troi and there got gove had sen'll . ().

A. Five or ten minutes, I guess.

Q. What did you all talk about during that time!

A. We didn't talk.

Q. You mean you just sat there and didn't say anything to one another ! neer paints and smook a tentent

O. And had you ever seen the Cunningstellant TARE

[fol. 80] Q. He didn't do anything by the way of mistreating you did he ! heat that the form, did your list, ov. . A

A. No mistreating, no.)

Q. Did he hold you there!

A. He was laying on top of my body. I couldn't move.

O. Why hadn't you seen it's

Q. Did you ever strike out at any of these boys, fight them, or anything of that nature?

A. No, sir; I didn't

here you then were to be offered or struggle in any way? . band no as well didn't fight

A. I ran from that car to get away from them.

Q How far did you run from the carl 1980 (north)

A As far as I couldy sa nov and , receives in , tent [07, 101]

And that was about thirty to forty feet; right?

Ltripped over something, of min onthe abib no

Q. And you didn't get up and run any further!

A. I was out of breath. seven in Aninant mid fras

Q. Now when the other boys got there, did they hold you, or keep you there in any way?

A. They were standing around me.

Q. They didn't beat on you, or pick on you in any way, did they, physically has in the winds were suit its .c.v. A

A Re dolog to make a statement

Q. Now how long had you and Poster been seated in the back seat of the car before these boys showed up that evening to the the sugar to the questionals and the [fol. 81] A About ten or fifteen minutes to now hat a for

u.Q. You all had only been there ten or fifteen minutes to 10

A. Yes, cutt rooms a evantine top of the witness, tooy bill Q. And you were sitting in the back of the car; is that

A. Yes

Q. Do you want this jury to believe that somebody else drove you all out there and then left you there, and never came back; is that right?

A. Yes, sir.

Q. And you never inquired why they didn't come back !

A. I know why they didn't come back

Q. Why didn't they come back?

A. Because by the time they got back with the gas, the police had already arrived, due to Foster's telephone call, and they couldn't get down Batson Road. There were police cars and the ambulance there, and they couldn't get down, Q. What do you mean

A. My friends also arrived during that time and saw the police there and they turned around and went back. That is the reason they didn't come down.

Q. Why did your friends turn around and go back! Wouldn't it be more usual to come down and see what was going on? [fol. 82] A. No, ar Hoper; that the or A. No, ar

Q. Were they in any kind of trouble with the police themselves ! anything to dried on ulike 68 hatch

Mr. Kardy: Objection cores for at the True of T he The Courts Sustained rettem elimovni a ei fail [48 lot]

Q. You weren't present when the Johnson boy hit Foster that evening, were you! then to drink the day of all tadT .A.

The Court: All right.

And you don't know what happened to Foster at the time do yout de gross sent probed subject to the good

'a evening?

A. No. sir. a. hither Do you remaisher that!

Q. And you didn't know whether he had been beat up or not, at the time these boys were in the woods with you, did you! Q. And you were sitting in the back of the tie of s. And

Q. Joyce, have you ever been convicted of a crime, your-

Mr. Kardy: Object what at was and been nov

The Court: Do you proffer to prove anything other than a juvenile offense? e and didn't rie Real of A ne

Mr. Prescott: No, your Honor.

[fol. 83] The Court: It wouldn't be admissible.

Mr. Prescott: I believe I am entitled to show if she has record.

The Court: Approach the Bench, gentlemen.

Bench Conference : Saltros your lans

The Court: Read the question back

The Reporter: "Joyce, have you ever been convicted of a crime yourself."

The Court: Objection over-ruled. Answer the question.

At Yes, sir. ony wanted dome down your reason they take

Q. What was that crime ! rabbasive usave bib vow . O

A. Bunning a vay from home tiles a rear ed it rabino W

Mr. Kardy: Ob, your Honor; that is no crime.

The Court: Is that all you have been convicted of

A. Yes, sir, didn't get up and run any further tagvisanted

The Court: That is not conviction of a crime, Joyce. [fol. 84] That is a juvenile matter, So your answer would be other than that no, that you have not been convicted of a crime; is that right?" that evening, merecycle 10 , 207

No. SIL.

A. That is right.

The Court: All right.

tuon buqua

A. Laving on the ground.

Mr. Kardy: Will you instruct the jury, your Honor, in that regard? ... I standing to the sade.

The Court: Well, the answer to the question is that the has not been convicted of a crime, ladies and gentlemen of the jury.

Mr. Prescott resumes examination of the witness.

Q. Joyce, do you recall telling these boys that you had had intercourse with sixteen other boys that week and they would make it an even twenty!

Mr. Kardy: Objection and many man dable to 1 The Court: Over-ruled.

A. No, sir.

Q. You didn't say that to them, or you don't recall?

A. No. sir.

The Court: You say you don't recall or you didn't tell them that? Mr. Prescott: I have no further questioner

A. I did not tell them that.

Q. Do you recall telling these boys that you were on [fol. 85] probation and if you were caught by the police you would have to tell them that you were raped?

Q. Mese seed on probation, at the tim Q. You didn't say that, either?

A. No. sir.

Q. Joyce, how do you think these boys knew you were on probation, if you didn't tell them that!

Mr. Kardy: Objection.

The Court: Argumentative; Objection sustained.

Q. Had you had anything to drink on this occasion, Joyce!

A. No, sir.

Q. Do you drink on occasion?

Q. Had Foster had anything to drink that night?

A. No, sir.

Q. Hadn't you been anywhere where there was anything to drink!

The Courty Well, the enswer to the questioning off . A

Q. Joyce, have you ever had a venereal disease ! done and

Mr. Kardy: Objection.

The Court! Objection sustained semmes stooms 1 116

[fol. 86] Q. When Foster said he was going to the police, did these boys make any effort to stop him ! would seak it an even t

A. No, sir.

Q. They didn't run after him and attempt to stop him, Didwar idoligi to praying any serve in any way!

A. No.

Q. And they were perfectly capable of doing that, weren't theyl

Mr. Kardy: Objection; it is speculative.

The Court: Objection sustained.

Mr. Prescott: I have no further questions.

Redirect examination and small of these wor all Q

By Mr. Kardy io Company to the supplement of the loss of the state of

Q. Were you on probation at the time these two boys raped you!

A. I that not tell them effectively

A. No. sir.

O Directing your attention to this preliminary hearing; you say you were confused about names?

Ac Vestir. Oh, your Honer: had hother all sylvan A all

Q Did you correct your testimony there in regard to having intercourse with three boys.

[20] 87] A Yes, six and of gradient had now half O

Q. You did tell them that all three of them had intercourse with your apprende that the sout and sold a At Yes lian that he, that theirseen against nowell in

Q When Stewart Foster said he was going for the police, or yellow through the woods; where were your

A Laying on the ground. The County All round

Q. And where was John Giles, mid. used faied not Q

A. At the time he was standing to the side dies good redto

Q. Why didn't you well back to would be enter what

A. Well the whole time I was there I was afraid to do anything against them, because I was afraid they would use violence.

Q. Why didn't you scream?

A. I didn't know there was anyone there to scream to.

Q. Why didn't you hit at these boys?

A. Because I was afraid they would hit back. add to M. A.

Q. And why did you let them have intercourse with you!

A. Because they had chased me, and I was afraid for my life. Mr. Prescott; A have no faither questions

Mr. Kardy: No further questions. re then thely sweet and relacioning the horizon

[fol. 88] Recross examination.

By Mr. Prescott; | snots a worst redt bid .0

Q. They hadn't used any violence on you up until that time, had they!

A. They had shown a great deal of violence before I started to run.

Q. They had only thrown a stone through a window of the car; isn't that right?

A. Yes. who shall see a sent been a minor sido citiosera a calif

Q. That was the only violence you saw, wasn't it?

A. That's enough.

Mr. Karde: No further questions. Q. And that was the only violence they used toward you all evening; isn't that right of notice mark the 1960 act]

A Tea Suchaton, in your capacity as a member of the

Q. They weren't cruel to you, were they find

A. They threatened me, and used profanity.

Q. Matter of fact, Foster used profanity, didn't he!

A. No.

Q. You don't recall the language he used towards these boys, do you? Some some some that blace I waw warms by blace

my girldriends come up.

A. No.

Q. You didn't hear him threaten that there were three other boys with him and when they came back they would take care of them if they didn't get away? abid vill C

A. North State of the Town of the State of the Market of t [fol. 89] Q. And that is when they asked for a cigarette. wasn't it! use violence.

A. No.

Q. Why didn't you servern! Q. As a matter of fact, you had given him your cigarette, hadn't you! The one you were smoking! The one you were smoking!

A. Not the one I was smoking high asw. Feenage & .

Q. But you did hand him a cigarette, didn't you!

A Foster handed it to him and bail well sangoal.

Mr. Prescott: I have no further questions.

Re-redirect examination.

Recross examinative By Mr. Kardy:

Q. Did they throw a stone through the window?

A. Yes. They were banging on it hear fuhed vad? Q

Q. What did they tell Foster!

A. They told him they were going to drag his ass out of the car.

the car: isn't that right?

That's enough."

Q. Did they tell him they were going to kill him!

A. Yes.

Mr. Prescott: Objection.

The Court: Don't lead the witness.

Mr. Kardy: No further questions. O. And that was the only violence they used

[fol. 90] Examination by the Court

By Judge Pugh nov of learn farrow voll 1. Q.

Q. Thy did you run when you got out of the car!

A. Because they were banging on the windows and they said they were going to drag his ass out of the car, and they said they wanted his girl and I thought maybe if I could get away why I could find some place to hide until my girl friends came up.

By Mr. Prescott: Amoitseid : Hosser AM

Q. Joyce, do you ordinarily wear make-up1,

Q. Approximately what time did you arriving to Mala

Q. You weren't told to keep it off just for this occasion? A. No. sir. Service and A. No. sir.

Mr. Prescott: That is all to the will a vileage offered Q

(The witness was excused.) maned seel 67 mods [22, lo] (Recess) Word knew worlde their start sale book nostell

Recess mort nively gainers sense vide a relate to the dir.

A. Whees I thus arrived.

SERGRANT ALTON DUVALL, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon the state to the control of ger wifeet, what you sale hattnate

Direct examination their night these poy blue O

By Mr. Cromwell:

he funningon residence, with reference

[fol. 91] Q. Sergeant, identify yourself for the Court and the ladies and gentlemen of the jury.

A. Alton R. Duvall, Montgomery County Police,

Wheaton-Glenmont Station.

Q. How long have you been a member of the Montgomery County Police air av 1 man was a mon our

A. Sixteen years.

Q. Directing your attention to late on the 20th of July, 1961, or early in the morning of the 21st of July, 1961, did you have occasion, in your capacity as a member of the Montgomery County Police, to go to Batson Road in Montgomery County, Marylandt

A. Yes, sir.

Q. Would you tell us why you went there

A. As a result of a radio call that there had been a rape at the end of Batton Road. if the woods on her back, with only a white blouse on that

I. That is the same car; that is the rear view,

Mr. Prescott: Objection. : :::ogear ?::::/// vill
The Court: Sustained. Ask another question.

- Q. Approximately what time did you arrive at Batson Boad and side and the time at the first time of the state of the state
 - A. Approximately 12:55 a.m.

Q. Describe exactly what you saw.

A. When I first arrived I saw a blue 1955 Ford at or [fol. 92] about 75 feet beyond the macadam, at the end of Batson Road. The right rear window was broken out. A few minutes later a boy came running down from the direction of the Cunningham residence.

Q. Where is the Cunningham residence, with reference

to the place where you were a may ull world That Dans

A. Facing the dead end of Batson Road as I am, it would? be approximately a city block to the left own while need tank

Q. Can you see it from there! noque, swellot as belittaet

A. No, sir.

Q. Could you see it that night! aciteminaze togrif!

A. No, sir. sy were hanging

Q. Describe the boy, if you will with all val

A. The boy was very hysterical. He was hollering that Mr. Prescott: Objection, and to noneline has wideled

Q. Don't repeat what he said but just describe it as best

A. He was bleeding at the mouth; had blood all over his shirt, and he came down to where I was beside the police car and told me—

Mr. Prescott probjection of moderates moy guitarrid Q.

Q. Don't repeat what he said when he came down beside.

[fol. 93] the police car what, if anything did you do.

A. I asked him what was the trouble all vinus visuos

Q. And as the result of his answer, what did you do?

A. We made a search of the wooded area, approximately 100 feet in diameter from where the car was parked, the 1956 Ford, and we came upon a white girl that was lying in the woods on her back, with only a white blouse on.

- Q. Who came upon the girl first ft at tad W. O. [du lot
- A. We were both together. Ass garled you at 18.17 A
- Q. Describe her, if you will a saw it or only that al. Q
- A. She was in a semi-conscious state.

Mr. Prescott: I object to that your Honor.

- Q. From your observation?
- A. That is a picture of going down the bill. Time select.

The Court: Go ahead; objection over-ruled.

Mr. Prescott: I move that go out of the record.

The Court: Motion denied.

Q. Will you state what you observe with reference to the A. She was approximately a hundred feet to the riling

Q. With reference to that

A. She was in a semi-conscious condition.

[fol. 94] Mr. Prescott: I object to that again.

The Court: Describe her, officer; what you saw that made you draw that conclusion. he sailtrog trib edt at lad? A

A. She was lying on her back, naked except for a white blouse, when we first came upon her, this Stewart Foster and I. We picked her up and she began sobbing and we picked her up bodily and I helped her put her clothes on. We brought her back to the police car and I called for an ambulance and additional help and placed a look-out for four colored subjects; description nothing. led Prob 1. A

Q. Do you know who that girl wast

A. Yes. ban (the hididzil a state on sometive of a bettier

the arminal best of the falls A. Her name was Joyce Roberts of a si tada : so 7. A

Q. Sergeant, I show you these pictures which have been admitted into evidence and ask you first, with reference to State's Exhibit #1, if you can identify the car represented in that picture? A. Yes, sir, it is the blue 1955 Ford.

Q. I show you what has been admitted into evidence as State's Exhibit #2, and ask you whether you can identify that?

A. That is the same car; that is the rear view.

[fol. 95] Q. What is the car in front of that 10 of W. O

A. That is my police care a renderman about some a W. A.

Q. Is that where it was parked that night 1 dires (1.9)

A. Yes, sir. Atkit shoesanto-imes in as a odd. A.

Q. Referring to what has been admitted as State's Exhibit #3, can you identify that picture; what that representst Q. From your observation

A. That is a picture of going down the hill, down Batson Road, to the entrance to the Cunningham residence, and this is the car as it was sitting off the paved portion of the road which goes down to a dead end.

Q. With reference to that car, where did you find Joyce Roberts beer der in wavreade nov fram einte bevilliv .Q.

A. She was approximately a hundred feet to the right of the car.

Q. I direct your attention to what has been identified as State's Exhibit #4 and ask you whether you can identify

that picture?

A. That is the dirt portion of the road that goes down to the gate, which is the property of the Washington Suburban Sanitary Commission with same tent ow nodw , sanold

Q. Is that looking up from the water! be this will I bus

picked her up bodily and I helped her put her diseY .A.

Q. Can you pick out the car which was there, in which the girl had been riding on the paneluding

A. I don't believe I can siturious ; abstrates bereios mol

[fol. 96] Q. I show you this picture which has been admitted into evidence as State's Exhibit #5 and ask you Who was she? whether you can identify it?

A. Yes; that is a picture of where we found Jovee Roberta an dein's seminar pred you work I threated

I lamble of the bathing had and they not product of

Q. Is that spot in Montgomery County? We did betten he

A. Yes it is, sir; at the end of Batson Boad

Mr. Cromwell: You may cross examine him.

State's Exhault #2, and ask you wanted you can itentify that I so spood and at at

A. That is the same car; that is the rear view.

off to Examination by the Court to I to use sidt but. . road, right at the end of the massagnmenter from I A.

A. Approximately 15 feet froiding eggles By Judge Pachton 1991 (1991)

Q. How was this girl clothed when you picked her up?

beyond the makedam.

- A. She had on a white blouse only.
- Q. She was bare from the waist down! Haward . IM
- A. Yes, sir.
- A. Yes, air.

 Q. Was she lying on her back! A wontracend height had.
- A. Yes, sir.

Judge Pugh: All right. Go ahead, Mr. Prescott. A. From where the car was sittled acided a loor

Cross examination.

A. Approximately weity block. There By Mr. Prescott: or to saw is and tood A. O.

Q. Did you have a discussion with this girl about how many boys had had intercourse with her?

Mr. Prescott [sie]: Objection, mood as with the day of bond [fol. 97] The Court: Over-ruled, trainton sell to meet lad!

- A. You couldn't see it, on account of the trees, in the
- A. No. sir there but southed and more now of hat Q
- Q. You never did discuss that with her! availed of you
- A. No. sir.
- Q. Did you see Mr. Cunningham at the scene that night?
- A. Yes Tididant le ite ser
- Q And he was right there when you brought the girl back to the car!
 - A Yes, mir. have no many sould with a glotage zongo.
- Q. Did you measure the distance to this spot where this alleged crime happened!
- u have never actually measured the tour bits Inaker
- Q. You didn't measure the distance that spot was from the highways even class on the seat and obit

Table asw 190

at A. I did not the new tastesses and testes.

Q. And this car of Foster's was right at the end of the road, right at the end of the macadam?

A. Approximately 75 feet from the end of the macadam.

- Q. In other words, he just backed down a little hit off [fol. 98] the macadam? She had on a while blonse only
- Mr. Cromwell: Objection was and another and aswell. The Court: Over-ruled.
- A. I don't know how he got there. It was about 75 feet beyond the macadam.
 - Q. How far was it to the end of that road | agbut.
 - A. From where the car was sitting!
 - Q. Yes.
 - A. Approximately a city block.
 - Q. About how far was it from the river!
- A. 500 feet, approximately. I am very familiar with that location, since I live out there grounding bar avoid your

Cross examination.

- Q. And the reason you couldn't see the Cunningham house that night was because the lights were turned off at that hour of the morning belor never than of the lal
- A. You couldn't see it on account of the trees. It is a wooded area. Can be a see that be
- Q. And do you want the ladies and gentlemen of the jury to believe that you couldn't see that house if the lights were onf
- A. I don't believe you could in July, no, sir. You could in the winter time, with the leaves off of the trees.
- Q. And that house isn't very far from the scene of this [fol. 99] alleged crime; is it? back to the car!
 - A. Approximately a city block.
 - Q. And how far would you say that is land nov bid . O
 - A. That is a good four or five hundred feet amira begalla
- Q. You have never actually measured the distance, have you! Che read tails constails all exuseem I mbib no! Q

 - the highway! Q. Do you recall what the weather was that night?
 - A. The weather was clear.

"QuiWas it warms and bearing that ted wastok squilled the

A. I doubt remember that the dea hom . 2 bon I stidlight Mr. Prescott: I have no further questions.
Mr. Cromwell: That is all.

auch arang you while present that our replies of maradain. JOHN KENNEDY, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon tax oil to wood advang dads bunch no W. O.

ne the turn and assessed Johnson and she Kidh Direct examination and mad water accountill of

By Mr. Kardy: or to domesting bereited A Q. Officer Kennedy, tell the ladies and gentlemen of the jury your full name. owner the municipation of the real

A. Detective Private John Kennedy, Montgomery [fol. 100] County Police, stationed at the Wheaton-Glenmont Station will an wood mortabuoneers

Q. On or about July 21, 1961, in your capacity as a member of the Montgomery County Police Department, did you have occasion to go to the Batson Boad area here in Montgomery County, Maryland

A. Yes, sir.

Q. What time did you go therello I and Glone at all

A. In the vicinity of 2:00 A.M. Q. When you got to the scene did you have occasion to observe a 1956 4-door automobile?

Q. Did you have occasion to look into that automobile? eation-blegmings bleggies

Dir and period

Q. As a result of looking into the automobile, what did you observe and what, if anything; did you find?

A I observed in the back part of the automobile quite a lot of shattered glass on the seat and on the floor, and also a very large piece of what appeared to be macadam.

Q. I show you what are already in evidence as State's Exhibits 1 and 2, and ask you if that is a fair and true representation of that automobile, as you observed it on the early morning of July 21, 19611 and Thomason 714

A. Yes, sir, it is.

Q. I show you this piece of tar or asphalt, or macadam, [fol. 101] and ask you if you can identify that all know

A Yes; it is a rock taken from inside the 1956 Ford. from the back floories was with of glithagen are we with

- Q. You found that on the floor of the carfoqu awoilor as
 - A. Yes: far was it to the end of that road?
- Q. What else, other than that rock, did you find on the floor of this carf
 - A. Shattered glass when the think are
- Q. Has this piece of material been in your possession, custody and control continuously since July 21, 1961, to the A. Detective Private Louis Translate Lemit tenestry

tot ton County Police, School and a The William Q. Is it in the same condition now as it was when you found it on the 21st day of July, 1961 hat, mode to no ...

A. Yes; it appears to be in the same condition, and to ad

Mr. Kardy: We offer this into evidence as State's Exhibit #6.

The Court: Any objection!

Mr. Prescott: Yes, I object to it. There is no connection of that with these three defendants at all the very state of the state

The Courte Objection over-ruled. Admit it in evidence

Q. After you left the scene there, officer, where did you

[fol. 102] got and the work to the Wheaten-Glenmont Detective Bureau for a while, where we had a conversation with John Bowie. As a result of the conversation Sergeant Harding and myself went to Brogden Road, which is off of Batson Road, where we arrested one subject. While en route back to the Wheaton Glemmont Detective Bureau, just as we were passing the Giles residence off Batson Road, we re-

seived a radio call and went up in the car where we took James Giles into custody. December Justine tele add of obeing

Q. Who had you arrested at the Brogden Boad residence! these war, and not will be a will and house out man the Wat

A. Joseph Johnson of alteracon vaguand no same at a war.

Q. Who was with you when you made those two arrests? A. Detective Sergeant Harding.

Q. And where did you take the defendant, James Giles!

A. We took him to the Wheaton-Glenmont Station, where

he was placed in a cell, with a police guard.

Q. From the time you arrested Johnson and the defendant James Giles, did you or any other officer in your presence make any threats, promises or inducements to either the defendant Giles or to Johnson

A. There were none in my presence, nor did I make any. [fel 103] Q. And you placed them in the jail at the Wheaton-Glenmont Station! vil inedatoral too beasig agg

States for the subject. White carcule back to Les V.Ac

Q. Did you see them later on that morning! a station as the intersection of Oid Saltimene A.A.

Q. Where did you see the defendant, James Giles!

A. I later talked to him in the interrogation room.

Q. Who was present when James Giles was talked to! A. Detective Collins, Sergeant Harding, Detective Lieu-

tenant Whalen and myself. I bequote violationant of A

Q. Did you, or any of the officers you have mentioned, make any threats, promises or inducements to the defendant James Giles, when you were in their presence at Wheston-Slemmont Station

A. No. sir.

Q. Did you have occasion to see James Giles thereafter? At the fail (ata) of the month that and a dr or weath the

theolystentlong work.

Quilly hen was that? The week his bill make and any delicate

A. That was on July 23rd in the evening hours.

Q. Who was present when you saw James Giles on the evening of the 23rd day of July, 1961 to bih awards and A

A. Lieutenant Whalen, Detective Collins, Sergeant Harding and myself o shamming hetertils yaz same an

[fol 104] Q. Were any threats, promises or inducements made to the defendant, James Giles, on that occasion is and the control of the control

A. Not in my presence, nor did I make any, sir.

Q. After the 23rd of July, 1961, to the present time, have you seen, or has any conversation taken place in your presence or in the presence of the defendant, James Giles!

A No str. base was the livering the same of the street of the

Q Directing your attention to July 23, 1961, did you have occasion to arrest the defendant in this case, John Giles!

A. I did her morniol, between your ent morl .Q

John Giles and it is seeing a seeing which you arrested

A. On July 23, 1961, Detective Thomas Thear and myself, were down in the Olney area, looking for the defendant; we had a picture of him. Also there had been a teletype placed out throughout the County and the surrounding States for the subject. While enroute back to Rockville with Detective Thear we observed the defendant standing in the gas station at the intersection of Old Baltimore Road and Georgia Avenue.

Q. That is George Smith's Esso Station at Norbeck?

An Yes, is present when James Giles was fall ser

A. Detective Collins, Sergeant tradt benegged tadW. Q

A. We immediately stopped the cruiser and the defen-[fol 105] dant walked over to the cruiser and I asked him if he was John Giles and he said he was. I advised him he was under arrest. He was searched, placed in the cruiser and taken to the Wheaton-Glenmont Station and placed in the Detection room.

Q. From the time you arrested him up until the time he was taken to the Wheaton-Glenmont Station and placed in the Detention Boom did you or your fellow officer. Officer Thear, make any threats, promises or inducements to the defendant, John Giles!

A. No, sir; we did not not have to you breen adult quinero

Q. While he was there with Detective Collins and Lieutenant Whalen were any threats, promises or inducements

John Giles roof mer tour add a boutern of the original and the contract of the

A. No, sir.

Q. Thereafter did you see John Giles on the 23rd of July, other than at the Wheaton Glenmont Station?

A. At the Montgomery County jail.

Q. Who was present at the Montgomery County jail!

A. Detective Lieutenant Whalen, Detective Collins and

myself.

Q. Did you or any of your fellow officers make any threats, promises or inducements to the defendant, John Giles, on the 23rd of July 1961, at the County jail, known [fol. 106] as the Montgomery County jail here in Rockville!

A. No, sir; there were none.

Mr. Kardy: Your witness.

Mr. Prescott: I have no questions.

KENNETH D. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and festified as follows, upon

Direct examination.

Mr. Kardy: 01

Langer, Gileal

Q. Officer Collins, would you state your full name, please?
A. Kenneth D. Collins, Detective Private, Montgomery
County Police, stationed at the Wheaton-Glenmont Station.

Q. In your capacity as a Montgomery County detective on the morning of July 23, 1961, did you have occasion to go to Batson Road, here in Montgomery County, Maryland?

A. Yes, sir.

Q. What did you observe when you got to the Batson Road area?

A. When I arrived at the dead end of Batson Road I observed a 1955 or 1956 light blue Ford. The windows on

[fol 107] the right side of this vehicle had been smashed open. Also on the ground by the right rear door was a spotthat appeared to be blood and improve and an A. A.

Q. After your investigation of that scene, did you have

a conversation with one John Bowiet its and radio will. po A o Yes or in the pressing grand dangard and though the che of

Q. As a result of that conversation, what happened?

A. As a result of a conversation with John Bowie. I had a conversation with one, James Giles.

. O. Where did that conversation take place for 120 .

A At the interrogation room in the Wheaton-Glenmoht Station dies stemation than 1881 whit to but not and it

Q: Who was present when you had a conversation with the defendant, James Gilest anon mamarath ans and oh

A Lieutenant Whalen, Sergeant Harding, Detective

Kennedy and myself.

Q. Did you or any of your fellow officers make any threats, promises or inducements to the defendant, James all to beginner a warried of here Giles 1

A No. sir.

Q. Were all his statements freely and voluntarily given!

A. Yes, sir.

Q. Would you relate to the Court and to the ladies and gentlemen of the jury what, if any conversation you had

[fol. 108] with the defendant, James Giles to

A. Yes. James was asked to explain his whereabouts during the late hours of the 20th of July and the early morning hours of July 21st. He stated that he was at the river, at the dead end of Batson Road, accompanied by his brother, John Giles, and

Mr. Prescott: If this is any kind of confession or admission, I think the jury should be instructed that this is

not admissible as to John Giles.

The Court: This is an alleged statement by James Giles and is not to be considered as evidence concerning John 1 Glesch inestall lo bao beeb edt to beginn I und observed at 1505 or 1506 leest blue Read Photolicus on

Mr. Kardy continues: bied subban tracher and

Q. Will you relate the statement that James Giles made? A. Yes. He stated that he was at the river with John Giles, Joseph Johnson and John Bowie. Shortly after midnight they left the river and went to Bowie's car, which was parked on the dead end of Batson Road. All four of them got into the car. They proceeded to back out of this lane and they heard a sound and a voice saying "Can you get by?" At this time Bowie stopped his automobile and all but Bowie got out of the car. Bowie backed the car, being directed by the three other men that had gotten out. After he had backed by the parked Ford, he turned [fol. 109] around in a driveway nearby. The three other colored males walked by this parked vehicle and went over to Bowie's car and had a conversation with Bowie. As a result of this conversation, Bowie drove off alone and James and John Giles and Joseph Johnson returned to the parked Ford that was occupied by a white female, Joyce Roberts, and a white male, Stewart Foster. At this time James Giles stated that someone asked the Foster boy for a cigarette and an argument resulted. Why they were arguing, he doesn't remember, or what was said, but a car came back down the hill towards where they were and James said he could see that it was Bowie and John walked to Bowie and James and Joseph Johnson stayed by the car that was occupied by the white female and the white male. Shortly afterward John came back and Bowie drove off the second time. When John got back to the car they argued some more with the white boy in the Ford. As a result of this argument the three colored boys, John and James Giles and Joseph Johnson, stepped to the rear of the Ford and a statement was made by one of them "Let's drag his fucking ass out of there, and get some of that pussy. T I asked James if he was the one that made the statement and he said he was drunk; he didn't know, it could have been. After this they went up to the car and the windows were broken out. I asked him if he broke

these windows and he said he didn't remember that he [fol. 110] could have: that he threw some rocks at the window. Shortly after they smashed the windows out, the white male got out of the right side of the car and the white female jumped out of the left side and ran into the woods. That just after the white male got out of the car, he was knocked to the ground. I asked him if he was the one that knocked him to the ground. He said he didn't know, but he was there. Shortly after the white male had been knocked to the ground, he, along with Joseph Johnson, ran into the woods as his brother, John, had run into the woods after the white girl. He stated that he, together with Joseph Johnson, looked around the wooded area for about sen minutes for John and the girl but couldn't find them. He returned to the car where the white male was at with Joseph. On the way to the car James stated he picked up a stick and had it in his hand. When he got back to the car the Foster subject was lying on the ground, with his head towards the right rear door of the parked Ford. He stated that he stood over the top of him with the stick in his hands and the Foster boy reached in his pocket and gave him a quarter. After he had gotten this quarter from Foster, they heard a noise in the bushes where they had been. They went into the bushes, in the direction of the noise, and found his brother, John, and the white girl, Joyce Roberts. He stated then that after he found them [fol. 111] he got into an argument with his brother, John, as to who was going to be first to have intercourse. As the result of this argument the brother, John, got on top of the girl and had intercourse for approximately fifteen minutes. After he finished Joseph Johnson got on the girl and had intercourse for about fifteen minutes. He stated after Johnson had finished he got on top of the girl and was having intercourse and was doing so for approximately fifteen minutes, when he observed a set of headlights coming down Batson Road towards the parked Ford. that the boy and girl had been in. He stated that at this

time he got off the girl and went deeper in the woods and remained in the woods until approximately 6:30 that morning, at which time he went to his home up Batson Tol. 1131 Q. Thereafter was there apother lineary about

Q. Is that the extent of your conversation with James Giles at the Wheaton-Glenmont Station on July 21, 1961!

A. No. I talked to him again in a line up to the land

Q. When did you have that line up wir!

A. We had the line-up at approximately 9:30 or 9:45 A.M. on the 21st of July and it and the same himself him

Q. How many people were in the line up to the to. At Six show his where this rape and taken places I also

Q Was Joyce Roberts present when you were lining them up?

A. No. Joyce Roberts was in a separate room within [fol. 112] view of the door the line-up was in the line up

Q. Besides James Giles, was Joseph Johnson in the line-upf

O. What if any, identification did the makeris asY . A

Q. At that first line-up, did you say there were six men. in there?

As Yes vair bib squeenil bnoses to bow seed when SQ

Q. Did there come a time when Joyce Roberts came in to view the line-up?

A. Yes.

Q. What, if anything, did you say to her in the presence of these defendants?

A. The defendants were told they could pick any spot in the line-up that they chose, and they each chose a spet. Joyce Roberts came into the room and viewed the line-up.

Q. Did you, or anyone in that room, point out these two

defendants to Joyce Roberts!

A. No. sir.

Q. How did she make any identification, if any!

A. She told us, in the presence of James and Joseph that each was one of the boys that had molested and had intercourse with her at the dead end of Batson Road.

Q What did the defendant, James Giles, say at that

A. James Giles didn't say a word and about the additional

[fol. 113] Q. Thereafter was there another line-up at the Wheaton-Glenmont Station on the 21st of July, 1961?

A. Yes; approximately five minutes later.

Q. Prior to that time did you have any conversation with James Giles in regard to the line-up!

A. Yes, he was told we would have the second line-up and he could change positions if he desired to do so.

Q. Did he change positions fater things of them w

A Yes. while the part of states that he still

Q. Do you recall whether Joseph Johnson changed posi-

A. Yes, he did appear on same arredold out to love A.

Q. Did there come a time when Joyce Roberts came to view that line-up?

A. Yes,

Q. What, if any, identification did she make!

A. She made the same identifications as she had on the first.

Q. On the first and/or second line-ups, did you, or any other officer in your presence point the defendant, James Giles, out to Joyce Roberts!

A. No.

Q. After the second line-up did you have any further conversation with James Giles?

A. Yes, sir.

[fol. 114] Q. Where was that conversation?

A. We had a conversation shortly after the line-up.

Q. And the conversation after the line-up was at the Wheaton-Glenmont Detective Bureau in Montgomery County!

A. Yes.

Q. Who was present when you had the conversation with James Giles after the line-ups?

A. Lieutenant Whalen and Joseph Jackson.

Q. Did you, or your fellow officer, Lieptenant Whalen, make any threats, promises or inducements to the defendant; James Gileto sminrom virae out no seese out to selid

LA Norstr. body were sold) comal drasting of The

Q. Were all his statements freely and voluntarily given? and also the location, or the goneral location of whole Ais

Q. Would you relate to the Court and the ladies and gentlemen of the jury what, if any, conversation you had with the defendant James Giles at that time.

A. Shortly after the second line-up was held I asked the defendant, James Giles, if he would take us back to the scene and show us where this rape had taken place. I also asked Johnson, in the presence of James Giles, and they both agreed that they would go back to this area and show us where this rape had taken place early that morning.

Q: What time was that when you left the Wheaton-[fol. 115] Glenmont Station in the company of the defendants, James Giles, and Joseph Johnson 12 Jamit disputitie

An Approximately 10:30 A.M. William to the dividending and ga

Q. Who else was with your a bial saw doin's asang to tous

A Lientenant Whalen Detective Kennedy and myself

Q. Where did you go from the Wheaton-Glenmont Station! Never den I bire Chi dididid a santi di occionde In Oc

A. We drave out the Colesville Road toward Spencerville, to Batson Road and went down to the dead end of Batson Road to the river.

Q. Did you have any conversation with the defendant, James Giles, at the scene on July 21st? when Rouse hading

the differ he laid shows my this school we not had a N Ae

Q. Did you make any threats, promises or inducements. on did any of your fellow officers make any threats, promises or inducements to the defendant, James Giles, on the trip from the Wheaton-Glenmont Station to the scene you have desirabled it is should levie to the desirable of the bedience of the

water the very lead to James Cilia and James and Allender

Q Were all his statements freely and voluntarily given at the scene! in think knew what about noise is decirally A. Yes, the war of the carnethiad add to middle like!

Q Relate to the Court and the ladies and gentlemen of the jury what, if any conversation you had with James Giles at the scene on the early morning of July 21st. 1961.

A. The defendant, James Giles, was asked if he would [fol. 116] point out to us the automobile that was involved and also the location, or the general location of where this rape had taken place toood and a stater now bluck

Mr. Prescott: I object to this officer continuing to characterize this as a rape, your Honor.

(The witness continues) I asked if he would show us where this intercourse had taken place, and at this time he pointed to a light blue 1955 or 1956 Ford, parked at the dead end of Batson Road. This car had the windows broken on the right side. We walked over to this car, and he stated when he was there that evening the white boy was sitting on the right rear seat and the white girl was sitting on the left rear seat. He took us into the woods. approximately forty feet from the car and showed us a spot of grass which was laid over as if it had had some use. and he said this was the spot where the intercourse had taken place and riotes of well mort on gov bib and W O

Q. I show you State's Exhibit #5 and I ask you if this is a true and fair representation of the spot that he pointed out to you that early morning of July 21, 1961 that or silliv.

A. Yes, sir. manned lineary district adr of hapfl gostad

Q. After James Giles showed you that spot, what trans-James Olles, at the scene on July 21st?

pired then!

A. After he had shown us this spot, we got back in the cruiser and went back to the Wheaton-Glenmont Station. [fol. 117] Q. When you got back to the Wheaton-Glenmont station did you have any conversation with James Giles, at the Wheaton Glenmont Stations of W and more quit

A. No. sir; upon our arrival back at the station, the warrants were read to James Giles and Joseph Johnson.

Q Where was James Giles taken from the Wheaton-Glenmont Station A Yes.

A. I left him at the station.

Q. Thereafter on that day did you have any other convergetion with the defendant James Giles but ad it balan

A. That day no die sit retta betata ell word finbib

Q. Directing your attention to the day of July 23, 1961. did you have any conversation with the defendant, John Gilestasade ristributation botate all asbaey suit otni una

into the unpokel upon that found her laying on the Yorks

Qu Where did that take place I roll dien begate subbinatell

At the Wheaton-Glenmont station is busyl ad bus sets

Q. Who was present when you had that conversation!

A Sergeant Harding and Detective Kennedy 10 0140

Q. Did you or anyone in your presence make any threats, promises or inducements to the defendant John Giles!

to do with the ent and he stared away from that age & d Q Were all his statements freely and voluntarily given? [fol. 118] mA. Yes with and M. T. 00: & violantizarings litter

Q Relate to the Court and the ladies and gentlemen of the jury what conversation you had with John Giles on July 28, 1961, at the Wheaton-Glenmont Station here in

Montgomery County, Maryland, Instantia and tails and ...

A. Masked John Giles to explain to me his whereabouts on the night of the 20th and the early morning hours of the 21st, of July, 1961. He stated he had been down to the river with his brother, James, Joseph Johnson and John Bowie, and when they were in the process of backing out of this lane they heard a horn sounded and a voice saving "Can you get by!" They got out and Bowie backed his automobile by. There came a time when Bowie left and he, in company with his brother and Joseph Johnson, went over to this parked automobile which was occupied by a white male and a white female. He stated one of the boys with him asked the boy in the car for a cigarette and? an argument resulted. While they were arguing a car came down the hill and he could see it was Bowie's car and he went over and talked with Bowie and then Bowie left and he came back and joined his brother and Joseph Johnson They argued he didn't know what about and he said he stepped to the rear of the car with them and they talked . of 1221 dant John Ollen, was told he could shange places

and then some of the windows were broken out. He was asked if he broke some of the windows and he said he didn't know. He stated after the windows were broken [fol 119] the white male got out of the right side of the car, and the white female jumped out of the left side and ran into the woods. He stated he immediately chased her into the wooded area and found her laying on the grass. He said he stayed with her for approximately fifteen minntes and he heard his brother, James, and Joseph Johnson, calling to him and he would not answer. He said he was there for approximately fifteen minutes when they came back into the woods and found him with the girl. He stated that at this time he left the scene and didn't have anything to do with the girl, and he stayed away from that area and away from home all day Saturday and all day Sunday, until approximately 3:00 P.M. on Sunday, when he was picked up. I asked him why he didn't go home that night and he said he was afraid the police wouldn't believe his Inly 23, 1961, as it is a wind wenter of leave at the Station August 1988

Q. Was that the extent of your conversation, on July 23, 1961, at the Wheston-Glenmont Station, with the defendant, John Giles!

o A o Yes, sire birth sub lightant is Ha 1601 four for tall subt

Q. Did you have any conversation with him further, at the Wheaton Glenmont Station on the 23rd of July, 1961?

A. No. sir.

Q. Did there come a time later when you had conversa-

. And Yes, sire on the machine track the sale in the sale and then

[fol 120] Qu Where was that the best and such at the anather

A. That was that same evening, at approximately 9:00 P.M. at the County Detention Building in Rockville.

Q. Who was present when you had that conversation?

A. Lieutenant Whalen and James Ciles in Hidisolt assob

Q. Did you make any threats, promises or inducements, or did Lieutenant Whalen make any threats, promises or inducements to John Giles at that time, at the jail?

stepped to the rear of the car swith their and singellikt

toQ. Were his statements freely and voluntarily given at he had chosen in the first line-up. Some of the omit ted switched positions. She was asked it she knew anas LdAin

Q. Would you relate the conversation you had with John Giles, at that time, in the presence of James Giles I dans

A. Yes, air. We asked John if he had anything else he would like to tell us and he said "No" and so in his presence we brought his brother, James, into the room and asked James if his brother, John, was standing with him beside the car when the statement was made "Let's get his fucking ass out of there, and take some pussy" and he said he was, and the brother, John, did not deny this w to bevolve stori

Q. Was that the extent of your conversation at that time?

A. The line up at the Wheaton-Glemmont . Tial sey were Q Did there come a time when there was a line-up in [fol. 121] which the defendant, John Giles, appeared?

sampled these boys in build a beighth and waski A

Q. Where was that and at what time? pluce aw as seels

A Five minutes after our conversation, which was a little after 9:00 P.M. This line up was held at the County Detention Building, Rockville, Maryland, an esolo an leg of

elections of the leadings of

Q. On July 23, 1961?

A. Yes.

Q. How many people were in the line-upf

A. The defendant John Giles and five inmates from the County jail. [fol. 123]

Q. Did Joyce Roberts view that line-up!

A. Yes; we had two line-ups; one right after the other.

Q. What identification did she make in the first line-up?

A. She pointed to John Giles and that was all wall book

Q. Did you, or any other officer, point out the defendant to her, or make any remarks to her prior to her identifying John Gilest

And this happened hack in July didn't it offingon A

Q. In regard to the second line-up at the same place, a few minutes later, what, if any, identification did Joyce Roberts make in that line up food at a sabrately benegged to

A. The second line-up was shortly after and the defen-Nol. 122] dant, John Giles, was told he could change places

if he desired to do so. He elected to remain in the spot he had chosen in the first line-up. Some of the men had switched positions. She was asked if she knew anybody in this line up and alse walked over and pointed to the defendant. John Giles, and stated to us, in his presence, that he was the first colored male that had intercourse with her on the night or the early morning hours of July 21st, in the wooded aren at the dead end of Butson Boad.

Q. In regard to the line ups you have mentioned, on July 21st, 1961, at the Wheaton-Glemmont Station, and the line upe at the Montgomery County jail, were all the subjects oblored, or white, or could you describe with partic-

ularity how they were dressed? to incline all had an W. O.

A. The line-up at the Wheaton-Glenmont Station were all colored. All six of of the six, four of these colored males were brought in off the street and all of them resembled these boys in build and heighth and weight as close as we could get them. The line-up at the County iail was held with immates from the jail and all were dressed in jail clothing, blue coats and blue pants, and we tried to get as close as possible the same build mising the most and Q. On July 23, 1961?

Mr. Kardy: Your witness.

Cross examination

By Mr. Prescott:

arisoloffi sazoti hitl 42. Q. Officer, at the time this boy was confronted here at Detention Building by his brother, didn't he shake his head when his higther made that statement higher add .A.

A. No. sire John didn't shake his head at that times (1.4).

O. Ha didn't shake his head! the amortimes of the result of

A. Nocwire he did not when you had that confeeled ado to

Q. And this happened back in July, didn't it, officer 1/

A. Tec niz. wakes compared by consequence of brigher at O

Q And you remember this statement so clearly, just like it happened yesterday; is that sight that in in mining at redoll

A. The second bue-up was short houseled on the A. The [fol. 122] dant, John Giles, was told he could change places

The Courter Over-ruled th out to antiques are no Y .A.

A. Yes, sir; I do. The latter that only two of

Q. How do you recall so vividly just exactly what these boys told you!

A. I investigated the case, and I wrote up the report.

Q. Did you refer to the report?

Yes.

Q. When! And didn't she tell the police with and in the st there was only two of those bors that Q. And again just before you came in here today! [fol. 124] A. No.

Q. Did you tell the jury everything that these boys had told you in all the conversations you had with them?

A. No, sir. Q. What didn't you tell the jury!

A. The defendant, James Giles, stated that he had made up his mind to take some pussy, but when he got into the woods, he didn't have to take it.

Q. Why didn't he have to take it?

A. He said it was there for his asking, and the girl did not resist.

Q. Why didn't you tell the jury that? Don't you know you are supposed to tell the entire statement?

A. Yes, sir.

Q. Why didn't you tell them that? Are you trying to prejudice this case!

A. No, sir; definitely not. so own vino tada sould said

Q. And yet you left out the most important part of his statement; isn't that correct! three countil bales had had intercent

Mr. Kardy: Objection. nada nadatain and and but O The Court: Sustained.

Q. He told you that this girl volunteered, and he didn't have to take it; isn't that right! what he knows. Objection [fol. 125]. A. Yes, sir; that's what he said.

Q. Did he tell you this girl disrobed herself!

A. No, sir; he did not. He didn't remember that

Q. He didn't remember that, but he remembered everything else; is that right.

A. You are speaking of the defendant, James Giles!

that though i

Q. Yes.

A. Yes, sir.

Q. John told you he didn't have intercourse with her, didn't he?

A. Yes, sir; he did.

Q. Did you have a conversation with the girl, herself?

A. Yes, sir.

Q. And didn't she tell the police when she came there that there was only two of these boys that had intercourse with her!

A. No, sir.

Q. She didn't tell you that at the Wheaton-Glenmont Station!

A. No, sir. I questioned the girl at the station and she said all three of the boys had intercourse with her.

Q. Who gave out the report to the newspapers of this case; was that Lieutenant Whalen?

A. I don't know, sir.

[fol. 126] Q. You didn't tell the newspapers that only two of these boys had attacked her, and that was what the girl had told you?

A. No, sir; I didn't talk to the newspaper.

Q. And the girl didn't tell you that?

A. No, she did not.

Q. If I told you that the girl said here today that she told the police that only two of the men had attacked her, would you say that was not true!

A. She told me on the morning I questioned her that

three colored males had had intercourse with her.

Q. And she was mistaken when she told this jury that

Mr. Kardy: Objection.

The Court: That is not proper. Just ask the witness what he knows. Objection sustained.

Mr. Prescott: If it please the Court, I believe I have a stright to ask it—

The Court: Objection sustained.

Q. Ne dida't rentumb thing elset is that right

A. Nix sir: he did not.

Q. In other words that girl was lying then when she said that she had told the police that only two of the men had attacked her?

(1911 1991 Reporter's Certificate (ounified in drining).

[fol, 127] Mr. Kardy: Objection.

The Court: Sustained another nectors of

Mr. Prescott: I have no further questions.

Redirect examination.

-wel to as By Mrs Kardy: It respect Treatment [Oct for

Q. When you said you didn't recall James Giles telling you at the Wheaton-Glenmont Station that he didn't have to take any pussy, did you ask him why he didn't have to take it?

A. Yes.

Q. What did you say to him! Hoseow All yell

A. I asked him what he would have done if he had been, in that position?

Q. And what was his reply that disserted avideded . A

A. He said "You mean if I was a girl?" and I said "Yes" and he said "Cooperate, I guess."

The Court: Overeruled. Attorne and was vinew? A

Quality did you fail to tell this jury the whole statement?

[fol. 128] A. I didn't mean to leave it out. I am not prejudiced. I just forgot that part of the statement.

Q. But you didn't leave anything else out, did you!

A. No. That is just something I happened to leave out' and I am sorry.

Mr. Kardy: No further questions.

Mr. Prescott: No further questions, in antit tadit tA

Mr. Kardy: The State rests was a said to red before

Mr. Prescott: Can we approach the Bench, if it please the Court!

(Bench Conference.)

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Prescott: I move for a directed verdict on behalf of both defendants at this time, on all counts of the indict-[10] 127] Mr. Kardy: Objection,

The Court: The motion is denied, matter : truo adT

his yes brokening and traition again to those aft alfa-[fol. 129] Reporter's Certificate (omitted in printing). And didn't she toll the unortanguary developing the

[fol. 130] SEBGRANT STANLEY HARDING, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination

By Mr. Prescott: Mild of 1902 1807 bill had W . O

Q. State your full name. A. Detective Sergeant Stanley Harding.

Q. Where are you employed?

A. At the Wheaton-Glenmont Station, 2000 ?" bias of bas

Q. How long have you been on the Montgomery County Police force as a detective? The Court: Over-ruled.

Incitison tail ai

and I am sorry.

A. Twenty years this month.

Q. Did you have occasion to interview the complaining witness in this case, Joyce Carol Roberts?

A. A very little bit. of of mann fabit I.A [82] lot),

Q. And when did you see her! want that I have being and.

A. I think it was on the 21st. a syant rabib nov said .Q

Q. 21st of July, 1961 T pariforms jen si ted T .o. A.

A. Yes, sir.

Q. Where did you see her!

A. At the Glemmont station. up terrint SN . VB12X 111

Q. At that time did she tell you that only two boys had attacked her on July 20, 19617 Mr. Prescott: Can we approach the Bench .xia toN cAc

[fol. 131] Q. You don't recall her having made that state-(Bench Conference.) ment to you!

. Q. Did you talk to Mr. and Mrs. Giles, the mother and father of these boys five full management of benegged . A. No. sir. A. No. Q. You have never talked to them at all the had all the A. I talked to James when I picked him up. ala and the Q. You didn't talk to Mr. and Mrs. Giles! A. What do soft mean by "report to the neworl pa Mr. Prescott: I have nothing further. Mr. Kardy: No questions. [fol. 133] newspaper articles. Itsing nothing to de with LIEUTENANT LLOYD M. WHALEN, a witness of lawful age. called for examination by counsel for the defense, and

having first been duly sworn, according to law, was examined and testified as follows, upon at wash not but .0

these boys had intercourse

Q You don't believe Jovee

Cross examination.

A. That is right.

A. She testified

she fold the jury that?

Direct examination.

By Mr. Prescott:

- Q. State your name.
- A. Lloyd M. Whalen.
- Q. Where are you employed?
- A. Montgomery County Police Department.

[fol. 132]. Q. In what capacity! and alting any of an W. O

- A. Detective Lieutenant. Stanff ving and lo mainlines
- Q. How long have you been employed in that capacity?
- A. For about a year and forty-five days.
- Q. Did you have occasion to interview the plaintiff in this case, Joyce Carol Roberts!
 - A. Yes.
 - Q. When did that take place?
 - A. On the morning of July 21st. which will ver
 - Q. Where was that?
 - A: At the Wheaton-Glenmont station.
- Q. At that time did she tell you that only two of these colored boys had attacked her on the night before?

A. No. sir inmitted to obtil year and of heiles I. A.
Q And I ask you if you gave out a report as to what
happened to the newspaper that day!
Q. You didn't report to the newspaper a evad no? Q
A. No, sir. qu'min belliq I ashw samat et bellet I. A.
Q. Do you know who did report to the newspaper?
Bresk that down a little hit for me
Q. I might say the newspaper quotes you—
Mr. Kardy: I object to any newspaper quotes or any
[fol. 133] newspaper articles. It has nothing to do with this case. It is absolutely immaterial and irrelevant and
I move that it be stricken not ye not make not believe
having first been duly sworm acchemistant struct entre lestified as follows many
Q. And you deny that Joyce told you that only two of
these boys had intercourse with her on that evening! A. That is right.
Q. You don't believe Joyce was telling the truth when
she told the jury that?
A. She testified— a charmont Shatanan mov stade. Q
Mr. Kardy: Objection. The rest to admit W. M. byold A.A.
The Court: Sustained Leaded Vinne O vienegline M. A.
Q. Was Joyce mistaken when she told the ladies and gentlemen of the jury that a real state which a vitaded. A
Mr. Kardy: Objection: and now avad and well ()
Mr. Prescott: That is all attrocessor and now bid. O
Q. When did that take placed as well but end W.Q.
By Mr. Kardy: the vint to paintom out aO .A. (the lates we study 1Q). [fol 134] Q. Lieutenant, how long have you been on the
[fol 134] Q. Lieutenant, how long have you been on the
Montgomery County Police Force Tade bib. and fadt 1A. ()
A. Dighteen years with translable hodestry had eved berroles

Mr. Kardy: That is all, the hand all and a real of the land and the la

The Court: You may step down. Main to 08: I depend Q A. On July 20th and 21st we had left my house, and

ent you have so when you as The man of betting JOHN GILES, a witness of lawful age, called for examination by connsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon a selection and an error on nor bib and tank O

A About 5:30 as 6:00 clouds a second A Direct examination in a most emoil to a nov rethe .

by the car, then what did you it as Y . A By Mr. Prescott: nog rov bodos da Q [301.40]

Q. State your full name?

A. John Giles. A state of a validate bib good wolf. O

Qa Where do you live to a was ow ban mod an modA .A

A. Batson Road, Spencerville, Maryland. of babisah aw has

Q. How long have you lived there?

A. Ever since I can remember:

Q. How old are yout would be part big out and which O

A. Twenty-two.

Q How far did you go in school | How his suit that to

A. To the eighth grade. of the fire 08:21 toods vae bil .A.

Q. With whom do you live there on Batson Road in Spencervillet miele and sealth seamen mosaulot mosaulot.

[fol. 135] A. My mother and father.

Q. Do you have any brothers and sisters? A. In Bowie's car.

A. Four sisters and two brothers.

Q. What is your occupation to any and a property of the

A. Landscaping ad a work I fine test support 1.

Q. For whom do you work to send when you work to

A Well, when I was arrested, I was working for a plumber int with the court was a series

Q. Who was that the Regular state of the tad'T. O

A. William B. Giles. do as Whateouse noise immo Vratical

Q. Have you been working steady?

How was the confacing when you pushed A.

Q. On July 20, 1961, tell the ladies and gentlemen of the jury where you were at about 1:30 in the evening. my brother, James, and Johnson broke the window.

A. Working.	Mr. Kardy? That is all
	The Court : Noumny stepylon
THE THE PARTY OF T	it we had left my house and
started to take—	- Jane - William Complete
La conterrupting the with	ess) Where had you gone on
	tion by counsel for the defense,
A. Down to the river to go	fishing and swimming os a work
	own to the river to mode swot
A. About 5:30 or 6:00 o'clo	Control of the tenton of the Control
Q. After you got home from	H-WOPKT
A. Yes.	MAN AND SHOULD SEE A PROCESS OF THE Y
[fol. 136] Q. What had you	
A. Just to swim. Q. How long did you stay	U. State your full names
Q. How long did you stay	at the river and and A.
A. About an hour and we	saw a lot of big fish down there
and we decided to go haning.	A. Batson Road, Spencerville,
Q. And then you went back	tethe river to an and wold . O
LA 1053 that intercourse t	A liver cione I can remomble:
Q. And what time did you	get back to the river to woll .Q
A. I'd say about 9:00 o'cloc	ok was talibas awa tamew P-bAr
	through fishing that evening?
A. 1 d say about 12:30 or 1	A. To the eightin gr. Apolo'o 00:
	gone lishing! modw diff. O
2007、101.000 (14.000) (14.000) (14.000) (14.000) (14.000) (14.000) (14.000) (14.000) (14.000) (14.000) (14.000)	es Giles and John Bowie, and
myself.	[fol. 135] A. My mother and fa
Q. How had you gone!	Q. Dovlou have any bruteness a
A. In Dowle's car.	A. Four sisters and two brothe
Q. What kind of a car was	Q: What is your occupatiliant
A. Mercury, that's all I kn	A. Landscaping. A. Landscaping. Q. For whom do you work to st.
Q. where did you park the	car now nev op menw ro'd 13
	t the end of Batson Road, just
before it joins the river.	plumber.
Q. That is the gate right	at the Washington Suburban
	erty! Silliam B. Giles. A.
A. Yes.	car facing when you parked it?
1101. 1311 Q. How was the	car racing when you parked it!
A piraignt to the gate, ta	*Q. On July 20, 1979vir adapair
in the evening.	jury where you were at about 1:30

- Q. And you say you came back about 12:00 or 12:30 that evening ends On the digital and side of the basic A. Yes, and I date a named differentiable of the way of the
- Q. What did you boys do when you got back there?
- A. Well we started to go home and seen this car parked behind us and we asked the boy would he move the car; there was a lot of mud on the side, and the boy hollered and asked could we get by all right if home franket advantable the
 - Q. And you were able to get by all right fatt the time to Jane
 - A: We had to push the car over og bib sadW . O [921.io]]
 - Q. After you got by the car, then what did you do?
- A. We started to go and we decided to walk across the field. It was just as short, and we could get home almost as soon as we could in the car. out beworkt on astih A
 - a Qo Did you walk home there saw bear as out to too bequest
 - A. No, we never did go home to make you water it had a first
- Q. Tell the ladies and gentlemen of the jury just what Q. Does that slant along that fonce line of the benequed
- A. Well, when we come back past the car this boy, Stewart Lee Foster—somebody asked him for a cigarette, or something. The Abandana ton non and a horocaged and M. O.
- Q. What did he say but boiled trin side under al And't . A
- A At first he said "You black son-of-a-bitch; get away [fol. 138] from this care and ofed I blance bets atherest was plan
- Q. Then what happened?
- O. What did you do? A. We told him he didn't have no cause to talk like that, and he kept right on roll most mine how trad a look son bisk. (1)
- Q. What else did he say to you?
- A. He said he had three more boys with him and when they come back they were really going to get me, or something like that a blass and consulta quitories age reseal of those
 - Q What did he call you all feved bloow sats togs radi mort
 - An Called us a "black mother fucker" first de tud Masym yd
 - Q. What did you all do as a result of that? queaw one would
- A. Well first he said, somebody said "If you say that again" they were going to snatch him out of the car, and he reached down like that (indicating) like he was going to get something from the back of the seat and that is when my brother, James, and Johnson broke the window.

Q. Where was Foster seated in the carl vas nov bate. Q. framinovo

A. On the right hand side, in the back.

Q. Who was in the car with him! bad left my heale And

A. At that time I didn't know anybody was with him.) I found out later it was Joyce Roberts, was her well the Jon

Q. And you say Johnson and your brother threw rocks at the carton void on But Abis bolt and bounds bet a saw gradt

A. When he leaned down like he had a gun on the back seat, or something the letter of son of side enew noy bad . O.

[fol. 139] Q. What did you do at that point to had all A.

A. I just backed offering made may be vited by now rest A. Q.

Q. What did the occupants of the car do, as the result of seeing these stones thrown in there! an tank alw il blad

A. After we throwed two stones in there somebody jumped out of the car and was running through the woods and the Foster boy come out of the other side and I was walking down through that path, slanting like this. O.

Q. Does that slant along that fence line of the Sanitary Commission !

A. Sort of, at the spot where the girl was,

Q. What happened when you got up there? That examination

A. That is when this girl called me over there and said she was on a year's probation and she didn't want to get into any trouble, and would I help her get away. O. Then what happened! O.

Q. What did you do?

A. I said yes I guess so a eved the ib ad min blot a W . A

Q. Did you help her get away from there? that tops ad bus

A. I started to. a car was flowed was ad bib sale tad. O

A. He said he had three more hove benegation A.

A. We started to move and she said she didn't want anybody to know we were up there. She said if I got away from that spot she would have sexual intercourse with me by myself, but she didn't want my brother and Johnson to know she was up there: to this are ob it of his tand W. O [fol 140] Q. Did you have intercourse with her on that

occasions, and to the find washing the good oppose years "minger" he reached down like time time thing the he los bed as he

get something from the back of the seat and that is when my brother, James, and Johnson broke the window.

Q. Why didn't you have easy to some visiting a district I shall A. Because she said my brother and Johnson was calling me and I didn't answer, and the girl said "You can call them, if you want to" and I said "No" and we stayed up there for fifteen or twenty more minutes and my brother and Johnson came walking up the path and she said "Oh, they are going to find you sooner or later" and called them over and she said "Seeing as you tried to help me get away from here, you can be first."

By Mr. Kardy:

Q. She said that to you?

A. She did.

Q. What threats did you make to this girl?

A. None whatsoever.

Q. Did you strike her?

A. No; I never even touched her.

Q. Did you have any weapons with you, or anything of that nature!

A. None whatsoever.

Q. Did this girl ask you not to have intercourse with her!

A. No, she did not. She insisted on it.

Q. And even after she insisted on it, you say you didn't have intercourse with her? -leville; the one upstuits.

[fol. 141] A. I did not.

Q: What did you do while the others had intercourse with heri

A. She said I could be first and after that she said something about she was on probation and she couldn't afford to be caught in the woods up there, not even with her boy friend, and she said if I wanted to have intercourse with her, she said I could, and I told her no, and she said if she was caught up there she would have to charge rape.

Q. Did you leave!

A. Yes, a drag out que mion brown w hi bedan tart of

Q. Where did you got but dire on of nov batus will

A. I walked over towards the river for about ten minutes and then I came back to get my brother.

Q. When you came back to get your brother what was going on !

A. I couldn't actually see; it was real dark abib yaW.Q
How dark was it down there that highth saugust .A.
A. In the woods it was real dark in there. I bes an gottler
call thein the you want to a sed I spid! No hind mer thaved
up there for iffeen or twenty more at those of The By Mr. Breuth in the street
Thave no further questions. Que gualien en la nosquiel luns they are reing to find you sooner to la lord to the control of the land to the control of the land to the control of the land to the land
they are going to find you sooner or later and called thome
viewal research and attack and a subject to the one of the service
· · · · · · · · · · · · · · · · · · ·
[fol: 189] By Mr. Kardy: o de at Sunventualit bias add. O
文明的心理的,就是可能的规则是一种的 是 所有的心理,我们就是一个事情,但是一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个
Q. Have you ever been convicted of a crime!
[fol. 142] Q. When and where were you convicted?
[fol 142] Q. When and where were you convicted that
A. Rockville Court House of beginned never somen have to
Q. Here in the Circuit Court for Montgomery County!
WATTER and through that path, Andrey the effect and
Q. What was the crime you were convicted of I want it.
A. Housebreaking is available to now also his side bid. Q. And were you sentenced to jail! And his old of the control of the c
Q. And were you sentenced to lautify and bill and on. A
Q. What jail were you sentenced to the drive structural to the
A. Rockville; the one upstairs. don bill Acutist dail
Q. Did you go to the House of Correction by bib tanw Q
A. No. I did not
Q. Did you know this girl hefors, Joyce Carol Roberts!
A. I had never seen her before on its enw ade mode quitt
O. You never saw her before in your life in it thouse od of
And she never saw you before in her life? I be said the her, she was you before in her life? I be said to her, she was represented in her life?
. The transfer of the same same and the same of the same same same
Q. Didn't John Bowie tell you all to leave Lead now bill . O.
Q. He wanted you to go with him, didn't he bib ered W. O
He met cald "come on."
A. He just said "come on." at absence you hollow I do
Q. When John Bowie's car went by this car here that was stalled and out of gas, with the two people in its when
going on?

stopped and saked you all to
Tacantol
Survey and Language and A.
and go with me didn't het
and So with the chart life.
William Services and In In
to go dancing and we said
to the for the party and the party
someties may intelligible of
didn't hep mene w A
the water and a second to the second
ed to him, didn't you'l A
ie was sleepy and he wanted
A Yell
th him again, didn't het
A CHAPTER ON A TOPPENTY
ti chori shiili rodhassiHiig
nome in a few minutes.
WATER THE STATE OF
int was nerved and making
特性學學的一种學問題的學問題的學問題。
About well apply to Side of
down to the river, wouldn't
thrown through there.
O. What kind was theown
A. Therewasen't day unit
Thyundroness leaters all ver
homer will store shore will
Mar has the Property Property L. L.
o home for the law of
g to do, until we asked for
this argument started
pushing the windows in 1-1
A. I guest twenty fret: or
White Whody and Thousand
A Second Section Control of the Control of
your brother, didn't it
ted for the eightetter . A:
I thought that if I put this or
9

Q. How close were vo	nistor your brothers James, and
Johnson 1	(fol. 143) go with him, didn't het
A We were all standing	A. He didn't stop until he stood
O You were together.	eren't you have amo " blue off O
A. No.	A. He didn't say it like that.
O How for enout wore	Q. What did he say? . ! uoy
A About the distance w	A. He asked if we wwoners
	her was that far away from you?
	Q. And he backed down agraes en
A. We were in block of the	k through the windows
A. I don't know, men of	Q. And you went up and talked
	A. He said something about he veto go over to Mt. Zion.
A. Yes.	[HERENDER MATERIAL CONTROL OF THE C
	Q. And be asked you littibib odw A. Yes.
[fol. 145] A. No.	뭐 가게 되었다면 얼마를 하고요? 이 모시는데 그렇다면 하는데 그 없는데 그 없는데 그 없는데 얼마나 없었다.
	s or stones! the union by A. Q.
A. 1 don't mow? a m of	A We told him we could get hou
Q. Did anybody crash	this rock through the window?
(showing the witness the	large rock admitted in evidence).
A. 1 don't know. Not to	my knowledge. fuoy fabib say
Q. Did you hear the win	A. We went back past asordiwob
	break I don't think that was
thrown through there.	
Q. What kind was throv	on through there!
A. There wasn't any the	at big laying arounds to bluo W. Q
Q. How far were they	from the car window when the
little rocks were thrown I	[fol. 144] Q. Why-didn't you go ho
A. I don't know that eit	A. That is where we were goinged
Q. You were there some	Q. All right. Why didn't you go h
o do, until we asked the	A. That is what we were going t
Q. How far away were	you from the car when they were
pushing the windows in !	Who asked for the cigarette!
A. I guess twenty feet;	or fifteen. word Frob 1 .A.
	breaking windows, it had to be
your brother, didn't it!	A. Yes.
A. Him and Johnson;	but I never did throw any stones.
I thought that if I put fing	resprints on anything and I and A
The state of the s	(C)

Q. And that is why you stayed	civile from the back take
itt	.wonal mob l .A
[fol. 146] A. Yes matter and sell out	all of You Pack to You
Q. Did you tell your brother and	Johnson to story break.
ing in the car! takend san	
A. They weren't breaking in the c	
Q. What were they doing to minds	
A. They were trying to stop the l	
Q. He was trying to shoot them !	
A He reached down for somethin	we widn't brow what
it was don't remember that ybodes	hopeas consucutation and con-
Q. How close were you to the	
reached down	A. Sort of.
A. About twenty feet.	poy bid .Q. [841 fot]
Q. I show you this picture here,	
I ask you to point out to the jury,	and hold it we so they
can see it, and tell them how far a	way from that our voo
were when you saw Stewart Foster	reach down on the floor
boards of the cartife tent the now ba	
A. He was citting in the right h	and corner and I was
directly behind the car and I could	see his head bob back
and forth like this was a bad ad bins	when the man in the car
Q. And that is all you sawf	
A. I saw his head go down out of a	ightis ontownscool o
Q. Did you see him go out of sight	166k I litten t'abib I .A
A. His head bobbed back and for	th and he leaned down.
[fol. 147] Q. Where was your broth	ier, James Inbib I A
A. He was a little closer to the car	than I was sed no Y . O
Q Point out to the ladies and ge	ntlemen of the jury on
this picture where your brother James	A. That's him; power
A. I doubt know exactly blis 180	Q. You went by this o
A. You were theref	A. More or less over l
A. Yes. Tooy oren destalling	Quitte fine away form
Q. Well point out on that pictur	re where your brother
James was	Q. Yes
	special and I A
A. He could have been in any numb	
Qd Well where was her do you know	

(Q) And where was Johnson to a way we with the hard
A. J. don't know.
Q. You don't know where he was either 120 / A [341,101]
A. No. and notate when redicted may list may bid to
Q. Did you hear the glass break! The mit at yai
A. Yes, groups were at the unidened the engry yell A.
Q. Did anybody say anything about a guntary tad 12
Q. What did Foster say I ment foods of mirri saw ell .
A. M. mar day a construction of Fillibra Bons on Marin was and the
A. He said something about he had a gun in there and
he was going to shoot somebody.
Q. How close were you to the Tuest scale wolt Q
A. Sort of.
[fol. 148] Q. Did you run! his book that thed A. A.
Q. I show you this pacture here, State's Exhibit OK shirt
Q. Did your brother James run! too tiflog of nov. Jee I
can see it, and tell them how yar away from that the can be
Q. You mean a man in that car, with a gun, said he
was going to shoot you and you all just stood there!
. A. That is why he got the windows broke out wall A
Q. And then they all started throwing stones at the car,
when the man in the car said he had a guntaradd attrictions
the A. Yes man there . I was now its at tout bat. 9
Q. You saw the girl in the car, didn't you'd aid was I A
A. I didn't until I seen her in the woods, and now bid O.
Q. You told the police you saw the girl in the car.
A. I didn't tell the police nothing we real W. () [141.161]
Q. You heard John Bowie testify that he was driving
past the car, and he saw a girl in there; didn't yout of .0
A. That's him; L didn'tune nothing nov eredw eruteig sidt
Q. You went by this car with Bowie's car, didn't you?
A. More or less over here farad arew ucl .0
The state of the s
A. You mean when I went by it de the through W. O.
James was.
A. I. don't remember men yna pl med avaid bigoe ell . A.
O Von complete the property of the party of
Q. You saw the boy in the car when you went by, didn't you?
you! A. I don't know.

[fol. 149] A. Yes; that's the onliest person I can In the
And Conselecter jumped out the left side and man into the
Q. Didn't you go up the road with Rowing
racks Yes when we went by there is a path a little below
the bushes. If mover would be one and take had man bottogo
Q. And then you saw the boy in the carfact mode. At
A We had asked the boy for a cigarette when we say
coming back down.
Q. When you asked him for a circarette, the windows
were closed in the dark weren't they forest setted attack. A
At I don't remember that. I remember when he storted
all that cursing he started winding up the windows (1.4)
Q. Did you ask him for a cigarette! .o. [131 Joh]
O. Dain't von tell the good on non agent the work of the
Q. But you went post the carfeeled and that a nich I. A.
And when you saw this door open you by to
Q. Did you stop there to ask him for a cigarettet in diam
A. I didn't speak to him. Q. Did James, your brother speak to him. nov are it. ()
The beat James, Four brother speak to him, now are it.
A I don't know. I are to year her away from the homogo
Q. And then you stopped behind the car; how far from
A. About ten foot from all of the sear blues and
Q. And you saw his head bobbing and weaving and go
down, and you still didn't see any girls (and weaving and go
[fol. 150] A. I had come up closer them; bad dabit I A
Q. Is that when you saw the girl to I have outs but A. O
A. I didn't never see the girl glad of an hadea all A.
Q. There was a girl in the back seat, wasn't there!
A. Yes.
Q. But you didn't see her bleen sale you was biby al W Q.
A. She said she was on a year's probation and shelideto
Q. James saw her and John Bowie saw her and Johnson
88W her but you didn't the her folder disw assumment beares
the day of the said also said twee hereit to low be said been few that
W. Did they get out of that cast
getter test trouble, either: I will show you where the west

of Q. aWhere did they polloo but a last tes . As A. Somebody jumped out the left side and ran into the woods on the famous filling spect adding on nev rabid Q. Where were you standing when that left back door opened? the bushes. A. About ten feet over in the other path, well but . Q Q Somebody ran into the woodstal balls bad a.W. A. country back down. A. Yes. Q. What did von dol a set min boken nov men W. Q. A. Just started through the path and that is when this A. I don't remember that, she members she will be light Q. Didn't you run into the woods fants an aniento taut lia. [fol. 151] A. No. Astistano a rol mid has not bill Q Q. Didn't you tall the police you ran into the woods. A. I didn't tell the detectives nothing twee nov tuli ... Q. And when you saw this door open, you started to Q. Dud you stop there to ask him for a ciractysws Alsw A. That is right and it has and at design tubil I A. Q. Were you on the same side of the car that the door opened to the why he got the window he work thoo I .A. A. No. I was, more or less, back 49 ole son 120 but. Q. Why would you go into the woods when the girl went into the woods for men and end when the car woods and though A A. I went over into the path bend and was now but . O Q. Is that where you found the girlf Shits now has anyob A. I didn't find her; she found meres duck by her 1001 .101 Q. And she said "Come on over here?" nedw tadt al .Q A. She asked me to help here and one reven the L. A. Q. Did she say she needed help! in the way and T. O A. Yes, a him; I didn't see nothing. ! Q. Why did she say she needed help? I ahib now tod: Q A. She said she was on a year's probation and she didn't want to get in any trouble, and also she said she had had sexual intercourse with about sixteen or seventeen boys that week and she said two or three more wouldn't make

Q. Did they got out of that cart sederalizer somethin on Arthes, a train may nade var. of his year and was not up.

Q. Now, here we are about 1:30 in the morning, over [fol. 152] there on Batson Road and your brother, James, and Johnson pushing in the windows, and it is your testimony that you just walked down the path and you met a girl you had never seen before and she had never seen you before, and the first words out of her mouth were "I am on a year's probation and I don't want to get in any trouble, and I have had sexual intercourse with sixteen or seventeen boys this week anyway and two or three more won't make any difference."

An That is right bely any biff a gently an was this theta. A.

Q. Did she insist that you have intercourse with her! A. She did. ... later what you boys that becombined it

Q. She was begging you to have it! I soll I .A [] []

A. I wouldn't put it that way, but she insisted.

Q. How did she insist.

A. She said "If you will help me; you can be first" and she started laughing at rever h substword and self. A.

Qa How did you help her kidil lin nov well's seeing I . D

A. When she asked me to lead her away from that spot.

Q. Did you lead her away!

A. We started and made some noise and then we sat

· Q. What happened then the my dan entring mog bid. Q

A. We just started talking.

Q. What did you talk about? My how a water had all Q.

A. Mostly her. She was doing all the talking.

[fol. 153] Q. What did she say to you about her probation. Did she bring up her probation again? Shinow I .A.

A. Yes. We sure the windings had come of accommon to the Q. That's all she talked about, was her probation; was it? could was carrying a pole, welve their address the

A. She said she didn't want to get in any trouble.

Q. What did you say to her when she asked you to help hert flow did John try to the deader bodomes name agnet

A. I said "I am on probation myself; I don't want to get in any trouble, either; I will show you where the road is. It is hold her and no one threadened her.

Q. Did you show her where the road was land work Q
A. I would've but I bouldn'tst miestath madestal [201 for]
W.Q. Why couldn't you ohniw sait at unidency mounded bus
A. We made some noise when we moved and she didn't
want anybody to hear us, so we sat back down sat nov. hig
Q. So you were on probation and the was on probation
and so you just sat down and talked toong shar, a no may
trouble, and I have had sexual intercourse with gark aker
Q. What did you talk about when you two probationers.
sat down started through the Commonlibrium often thou
A. I didn't say anything. She was doing all the talking.
Q. And back at the car; what was going on back there,
A. She did.
[fel. 154] A I don't knowled of nor adlayed an world Q
Q. Did you hear any noises back there? I unlow I .A
A. No. wasan your saw ener discretisme administratiff . 9.
A. She said "If you will help me; you the new the D. A.
A. Yes, to my knowledge, I never heard a sound 1818 9d8
Q. I guess when you all finished fishing you were fish-
ling that night, weren't you not of our books ods world .A.
A. Yes, was more or less, hardways and basi ney bill Q
Q. Did you have a fishing poletant has better a Weshi
A. Yes, and fish, too.
Q: Did you put the fish in Bowie's carfungant tan'VI .O
A. In the trunk, ou found in ignight hear at a view o'll. A.
Q. Is that where you put the fishing poles, toot W
A. Mostly her. Showness down all the high her A. A.
Q You put all the fishing poles in there? . O [661.101]
A. I wouldn'traty that it doing ned que guird eds bill. moit
Q. You weren't carrying a pole, were you!
A. Nostfliderit felf shw though heathet ens ile a'tad' O
Q. No one was carrying a pole, were they? about the
wa A. T. couldn't way that's of fann t'abilitail his stall and
Q. How long were you in this woods, with that proba-
tioner, when somebody found you're more wouldn't make the
Al About ten mimites may be longer: un 1" bins 1 A
A Arison tien minutes may no ronger: ma 1 Digs 1 . E.
Ro Fifteen minutes with a line I will about setunion neather

A. It could have been ead one on moni now at well D [fol. 155] Q. You were citting down to read Nation L.A. Q. You weren't there when your brother harewise Workse Q. And then what happened, after you were sitting down A. Well my brother and Johnson started through the path and when they get within about ten feet of us the girl called them over, though anidated not ever tadW .Q Q What did she say to them? but from test troods . A A. She said "They are looking for you; they are going to find us sooner of later; I may just no well call them. Q. What did she say to them? A. She said "I know what you boys like" and started A. I didn't see anything. I just esto beatful and animals. Q Your brother had never seen her before, had het of A. I don't think so, to the days. Q. She didn't know Joseph Johnson, did shet and W. D A. No. it was two done later when the policed rather Q. And didn't know you! A. No. - thin: toroid Illia saw appared . Idenal bnA .O Q. Is that when she begged you to have intercourse with her! Well I was brotherd more of resulter his tadk : O: A. She didn't beg us. . . no entroy of their bled tent and Q. She just wanted you tot rentend many her the W. Q. A. Yes; I will put it that way, muston, sas thible sil . A Q. Who was the first one that had intercourse with her. A I don't know, and the state of the I of [fol. 156] Q. You were there! translate to Y. A. Yes, but I didn't have intercourse with her. Q. Who was the first one that had intercourse with her? A. I don't know. After I said "I don't want to get in any trouble," I just left at braud has strigil out noce it . K. Q. You didn't help that girl strall, did your Tobid . O A I tried to help her war waster was Desog and the Q. How did you try to help her! A She said she wanted to get away from there and I told her I would show her where the road was. No one tried to hold her and no one threatened her.

Q. How do you know no one threatened her place if . A. A. I didn't hear supporty threaten here Y O [ccl. lot] Q. You weren't there when your brother had intercourse with her were you to the former and derive made but it At No. body to hear year on the but burn down. Q. Where did you go when you left frond you liaW . ? A. Down toward the river and got to thinking, has disq Q. What were you thinking about? . revo medi bellas frig. A. About that girl and the boy mostly, the way they A. She said "They are hooking for you; the gailos erew Q. And that made you come back out? a second as hell of A Yes have at the car topact of was ade bile to W . Co-O. When you came back what did you see the and A A. I didn't see anything. I just called my brother and [fol 157] five minutes after that is when the police cars A. I don't think so. Q. When you got back your brother was still there, wasn't he he my knowledge. I never heard a sound, ou . K. A. Yes cas when you all injurit son word Knich bath 4) Q. And Joseph Johnson was still thereto. ON A. A. I don't know about Johnson and ada hadwatath al. O Q. What did you say to your brother! A. She didn't ber us. A. I just told him to come on. Q. What did your brother say way bearing taut odd .Q " A. He didn't say nothing, so I left myself. I . A. Q. Did you ran I mit bed stadt and dard ast naw full . O A: I doit know. A. No: I didn't run. [fol. 156] O. You walked the distributed an interest work of A. I was a good ways away from there when the police Q. Who was the fluct one that and retered galings and od Q. How did you know the police were coming tob I .A .. A. I seen the lights and heard the sirengel ".eldpeet year Q. Didn't you hear Stewart Poster say he was going to call the police! were you in this wood glad of berti L.A. Q. How and you try to indep her to trade mor with I A ?! Q. Where were you when you heard him say he was told her I would show there where facilities at lies of going tried to hold her and no one threatened her.

A. Down near the river in patients and research forth 198
Q. All by yourself! we regard add the cash problems Mani-
and the second by the second of the second his was Veralle,
rith a girl, but he was doing all the tenthing Q. [161. 161]
A. No. I wasn't fishing.
Q. Where did you go after you left? residence had age.
A. After I left where?
Q. Down by the rivers warm desarlot rase now bid Q.
A. Oh, you mean after the police came?
O off they had cursed there it the early you would be
A. I went to Norbeck Tooy I able to make lenish
Q. After the police came you just walked away?
A. Yes, and a property of the the distribution of the control of t
Q. You didn't run! Was very low to they did life yell. If J.
As Not his which was the west of melting what con
Q. And walked down to the river!
A. Yes. Q. And it was two days later when the police picked
And it was two days later when the police picked
of them, did you hear them say, in your pitis answipping
A. They didn't pick me up. I gave myself up a of gaing
Q. It was two days later, wasn't it aw leven tadT A
A Well Ljust couldn't see going to jail for nothing.
Q. They picked you up at Norbeck on July 23, 1961. What did you do between July 21st and July 23rd?
A. Stayed in the woods most of the time. anion grew no
Q. Well, if you didn't do anything, why didn't you give
yourself up when the police first came to the scene!
[fol. 159] A. I didn't want any trouble and I was on
probation and when I found what the charges were, I gave
Type II and the continue of the state of the
Q. Did you hear them talking about they were chine
o pull that boy's ass out of there f naw regions 1007
A. No, only when that how started envelope
4. In other words Stewart Poster was dained at
suraing and you and your brother and Johnson said Wyon
100 tonewe any cause to say that!" Who said the s
A Either my brother or Johnson by the said the s

	A
Q. And Foster was cursing all the time tand awoll .A.	
A. I wouldn't say all the time; he said words, did ()	
Q. Three of you boys outside the car, and he was inside,	300
with a girl, but he was doing all the cursing 1 .0 [861.101]	
A. Yes	
Q. Did you hear your brother, James, curse at all?	
A. After I felt where he are revit ful baseof and A.	
Q. Did you hear Johnson curse at all 1 edt vd awo(1° Q)	
A. No, at that reman lottle out walks in your how all the	
Q. If they had cursed there at the car, you would have	
heard them, wouldn't you? " be blood of of thew I .A.	
A. I guest solidist the povemes solid and rella V.	
Q. So they didn't carse!	
A. If they did it was very low. There red be to f all	
Q. And you don't know who threw the brick in the win-	To the second
Q And walked down to the river !	
[fol. 160] i A. Nogot back your brother was street	
Q When you got back behind the car, with the three	2
of them, did you hear them say, in your presence, "We are	
going to get some passy ? I am that rubib year.	
A. That never was said and metal avab ow saw 11 .0	2
Q. Do you recall the conversation in the Montgomery	
County jail, when your brother was there and he told	
Lieutenant Whalen and Detective Collins that you knew	
you were going to get some pussythour will ai bersid at	1
Q. Well, if you didn't say that invent do about you it lied Q	
Q. What did he cay inso test soilog add nadw que tleas so	3
A. Detective Collins asked him "Were you going to take	Sec. and
some passy" and he said he wasn't and Detective Whalen	C.
asked him if he cursed this man and he said he might, and	T
that is all that was said on that occasion.	
Q. Your brother wasn't drunk on that occasion, was he!	*
Q. 100r promer wash parmin on that occasion, was nev	03
A No. 1 won making having a few and made with our cole. A	
Av News no and of the redtord mor ban how be no name	
Trans and you and your brother and Johnson said of	17. 4
Q. Now this girl picked you out of a line-up, didn't she!	I
A Yes, with the detectives to help ford an andid. A	A. 3.5.
	の大学の

Q. Tell Judge Pugh look right at that jury, and tall those ladies and gentlemen of the jury how the Montfol 161] gomery County detectives helped Joyce Roberts pick you out of a line up erachive add moin same all abine

A. They said they were going to get six men about my aiset, every one of them was larger, shorter or taller and number one, they called my name right off, and I think the girl should know my name by then doing that delative morning

Q. You were in the line-up and they called out your

name, and you raised up your hand?

A. No; they said "John Giles Number One" and she said "That is the man right there."

Q. And they had a second line-up and the detectives

picked you out for her then?

A. I was standing in the same place and they went over and told the girl my name, was examined with the state of the state of

Mr. Kardy: No further questions.

The Court: Any Re-direct! oda, per brether and desamaniniasindonsis. John

Redirect examination.

By Mr. Prescott: 1 aman'llu's moy ai tan'W Q

Q. Did the police take your clothes away from you. John ? Q. Where do you live! A. They did not be tall on the remaining of the A. A. Spencerville, Maryland on the tank and the control of the

by Mr. Presentition is with

Q. You don't know what became of those, do you! {fol. 162] A. I do not

Mr. Prescott: I have no further questions.

The Court: Step down. Approach the Bench, gentlemen.

(Bench Conference.)

Judge Pugh: Now ladies and gentlemen of the jury, we have arrived at our usual recess time and we will adjourn this case at this tune until 9:30 tomorrow morning. In the meantime you will not discuss this case amongst your-selves, or allow anyone to discuss this case in your

A. Well I worked for James Earle Lavmen

presence; and you are not to read the newspapers, if there is anything in the papers about it. That is to keep your minds entirely free from any prejudice and you are to decide the case upon the evidence that has come from the witness stand; so you will not discuss the case among yourselves, allow no one to discuss it with you, nor allow anyone to discuss it in your presence, nor read any newspaper articles that might refer to the case would bloods in

Case adjourned to December 5, 1961, at 9:30 A.M.

Sugger Cuel and the baid [fol. 163]

eredt the December 5, 1961." Q. AuM.A 08: end a second line-spead the detectives

A. Northey said "John. &

licdirect examination.

Thoses Av Av Prescitts

(Bonch Conference)

James Giles, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon Mr. Kardy: No further onestions. When you got back book bounded for the Virginia and the Court of the C

Direct examination.

By Mr. Prescott:

- Q. What is your full name!
- A. James Vernon Gileso 1207
- Q. Where do you live!

game to got some pussy?

- A. Spencerville, Maryland; on Batson Road in Vall. A.
- Q. How long have you lived there I'w word f'nob no Y .Q
- A. All my life.
- Q. With whom do you live?
- A. My parents.
- Q. How eld are you, James !
- A. Twenty.
- How much education do you have!
- Judge Pach A. I graduated from Sherwood, in June of 1961.
- And that was just a month prior to this happening?
- A. That is right.

 What employment were you following at the time of this incident.
 - A. Well I worked for James Earle Layman.

[fol. 164] Q. Deing what! I wad the for her hand a print and M appine A. Landscaping of 818 in a 1856 oggicandad A. Q. Tell the Court and ladies and gentlemen of the jury just what happened that evening after you got off from Q. Lattheijd side of the good, Ischage in which into the one A. We went to the Patuxent River to swim and fish. We went there about 6:00 o'clock and we were swimming for a while, and then we came back to go fishing. nQ. Where did you go back to tadthe sudfine saw ti but. Q A. The same place; Patuxent River. Q. What time did you get back there? As About 9:00 o'clock if ambing area agod nog bat. Q Q. How long did you fish? . tidais teds at the [bot lat] A. About three or four hours. Q. And what time was it when you were on your way home again, a sure was but by dished as bud you and HWW .A. A: Between 12:00 and 12:30 in bridge and file Loudt line yd Quowith whom did you go to the river, fishing to their bias A. John, my brother and Joseph Johnson, and John Bowie. 1 mid lies oid bit tad W Q Q. How did you get down to the river! A. With John Bowie at adended the mid need boy hiel . () Q. In John Bowie's cart the first and state and blade Aut A. Yes, ed. a test right tob sound of bib sail Q. Q. Where did you park that carfib ad hi mid blot all .A [fol. 165] A. Right in front of the fence, the barricade. 100 Q. That is, on the edge of the Suburban Sanitary Commission property towe region as that hims bea hib ad as Y . A A. Yes, sir. Q. What did Johnson do at that point? Q. Which way was the car facing! stoots a would off A. A) It was facing the river want of stoled tees off in awah Q. Now when you came up to the car to go home, what did you boys do 1 Sey har strangande baided gatherat? A A. Well we stood right behind the car. We were trying to show him how to back back, to keep it from going into the ditch on the side, and Johnson asked the boy for a cigarette or something on in the shall the think fith [701 do] been that bir.

1

Q. What boy; asked what boy! Harry at	- field 164 man
A. The boy that was sifting in a 1956 of	n 1955 Ford
2. Where was that Ford!	or Or Tellottiac Com
A. It was parked on the lefthand side of	the sale with the
A. It was pursed on the lerthand side of	which dissetted
Q. Lefthand side of the road, facing in	Which direction
A Facing out we'm qually feasure l'on	HERE TAKEM TASE SALES
O Time Series back un Betenn Road!	第2个时间,1915年2月1日 11150 MINE 11150
一、 10 1/10 V 10 10 10 10 10 10 10 10 10 10 10 10 10	SOULTEN THE CHAIN OF
And it was on the lefthand side as yo	ou raced up Dawson
Dande ramid instillation	and anne and wer
A That is right Fared Sand 192 007	Q What time did
Q. And you boys were guiding Bowie	a car around that
[fol. 166] car; is that right? I dail now	Q. Haw to fire did
A. That is right witness or around and	A. About thuse or
A. That is right wateress of Alarest March	1 4 4 4 - A 4 A ()
Q. After Bowie got around that car,	MEL CHU YOU GOE
A. Well the boy had asked if we had e	nongu room to get
by and then Johnson asked him for a cig	arette and the boy
anid nomething to Johnson I don't reca	II the exact words,
but Johnson said he called him a name.	a. vonu, my bro
O. What did he call him?	Castword
A Johnson said he called him a "blac	k mother fucker.".
Q. Did you hear him call Johnson that	A. With John Boy
s carf	Q. In John Bowie
公司工作,1000mm 1000mm 1	A. Yes.
Q. What did Johnson do?	would will his side
A He told him if he did it again he	Ifol. 1651 A Justin
out of the cars and some off to Inorian	off me as the T O
O Did he dost ageth	CATTAL AND ALEY MANAGEMENT OF
A. Yes, he did and said for us to get a	way from the car.
A What did Johnson do at that point	All Lesy Sills
A He throw a stone at dim but 5	tewart l'oster bent
James in the good before he throw it at mil	al Milari and it was
Ci. Whose man would that time!	DOA DOUGH ROLL OF
	2 CAPA 30 2 CASE 1111 P 1713 7
The state of the s	ne through the win-
dows in that the stone he throw through	to the window toling
done le spet die stout un entre diront	Manager Containing
diesting the atom that has been admi	ther min evidence)
[fol 167] .A. I don't think so; it con	DAM C. DOPRIDIA . HPAG.
been that big there for James Farla La	eman .

Q. What, if anything, happ	ened after he threw this stone
through the window two districts	there we are manufactured to the West have
A. A person jumped from	the lefthand side of the car
and went up through the wood	sedes marker his testant solven
Q. Who was that person?	to the grannel!
A. Joyce Carol Roberts.	A. We went in the woodson
	What the sime with the same
A. No. I did not. you desay	A. To see where my brother
Q. When did you find out wh	Q. Hid you find you saw sale ou
A. When I got in the woods.	are a White land and a full this and the first
Q. How long was that after	you had this altereation with
Foster?	to be trained both more bit by the
A. About fifteen minutes.	discretification of the route
	oyce got out of the car and
ran into the woods?	A. The girl called marse a
	got out too. The amilwall that
Q. Which side of the car did	he get out of with seed A. A.
A. Righthand, rear.	"acendol bus nor bak D
Q. What part of the car wer	e Foster and this girl seated
in the war are has seen the see	The section of the se
A. The girl was in the left i	cear, and he was in the right
rear.	A. She asked as whether with
[fol. 168] Q. They weren't in	the front seat of the car, but
the back seat, is that right	verilland and the state of the
	abe knew what we had I don
Q. What happened when For	ster got out of the car!
A. Well Johnson struck him	when he got out in ind ?
. How many times did he st	rike him?
A. Once.	
Q. What happened to Foster	the bader was at this break sign
A. He dropped to the ground	her clothes off t
Q. What did he strike him wi	
	would be first. She decided the
Q. You were there, weren't ye	Q. You all didn't have arter
A. Yes, I was there, but you	couldn't see too well; it was
dark, with night and the woods	are quite thirty If was hard
to see what he had. It might he	we been his fist with a swimm
using yesterday?	Ly.

recent the

理	
.۵	But he knocked him out; is that right ins li , and W . O
A	Well he was semi-conscious, between. He wasn't ex-
activ	A. A person jumped from the how has aroisenoung
0.	What did you and Johnson do after he knocked Poster
toth	e ground!
A	We went in the woods. stradoll ored and L
Q.	What did you go in the woods for it would not but you
Ă.	To see where my brother was
Q.	Did you find your brother? without white work out and Wash
A	Not right away. We walked down a little path that
[fol.	169] goes through there, y rather that any good wolf. ()
Q.	Did you find him! re give tang Howie's east aroust backer!
A	We found him. They called us, actually still tried h.
Q	Who called your loss sort rath beneguan that W.
(A	The girl called us, round that that whahold entional air.
Q	How long after the fight with Foster was that !
	About fifteen to twenty minutes; maybe ten.
va.Q	And you and Johnson were going up through the
woo	ds again at that point! Herewere edt to tras tady &
A	. That is right; together. What did the girl say to you when she called you!
	She asked us where we had been so long.
4	She asked us where we had been so long. What else did she say to your nature work? O [88] long.
38	She didn't say anything to me exactly: Well she said
	knew what we had—I don't remember really what she
ane	Q. What happened when Poster got out of the vileutos
-	A. Well Johnson se nest him wil nest ob each birdW.
	w the next thing she started to take her clothes off.
She	A. Once. theory that the of artists as were
	You don't know what she said; she just started taking
her	A. He dropped to the towned and a draw bed of the sector
	I don't remember what she said except she said be
WOI	ild be first. She decided that herself ver feed HeW A
0	You all didn't have anything to say about that?
	No. She decided it. She made the decision herself.
lfo	L1701 O What threats, if any, did any of you boys
ma	te to this girls and mand hand bly and the bard out fortwood of

A. None. Induction to help well Alabada Kerkel

off and have sexual relations with you!

them off of her own free will.

Q. Did anybody manhandle her to about on imput make.

A. What do you mean by that to localization aborrognat.

Q. Just what did you do to her! sham oil there shall A

A Nothing, tast imperiate oil out about edibit tail V Q

Q. You don't remember what you said, or anything, at the time she took her clothes off?

A. Well she said that she had been with 17 boys the night before—she didn't say the night before, she said sometime that week, I think, I am not sure, and then she said that three more wouldn't make any difference.

Q. Now who did actually have intercourse with her that evening!

A. Johnson and myself.

A Ble folded when up. I watched ob mid bib tadWh. Po

A. Well he was with the girl and she said that he could be first, but he never did. The reason I don't know.

Q. What did he do. Did he stand up to make to will be unifold

A. Johnson and I were off about twenty feet from them.
[fol. 171]. We went back about twenty feet to fire left of them.

Q. What did John do while you and Johnson had intercourse with this girl?

A. Well he was off about twenty feet then too. Well he may have left. I didn't see him.

Q. You heard Detective Kenneth Collins testify here yes terds about your statement to him?

A. That is right: look the area standingov erew eretW .Q.

Q. Was that statement accurate from take university of saw I A

Q. What, if anything, did the girl do at Masewillow . A

Q. In what way was it not accurate his and sand to A.

A. Well he asked me questions about the girl

Q. In other words, that wasn't your language that he was using yesterday?

A. Not at all. He worded it himself. and anov. A Q. In other words he asked the questions and answered

them to coverage . . They drive enotieter Janzas aved bus the

A. He provided the answers. He had it mixed up in the way he wanted to arrange it. Hiw sent meo red to the med

Q. You mean he made arrangements as to how this thing happened! the you go to the tradition mem uov ob tail W :4

A. That's right; he made suggestions, y bib tastw tast. Q.

Q. What did he mean by the statement that you told him you all decided you were going to get some pussy the way

A. He asked me did the girl assist me in anyway and I [fol. 172] told him she did and he asked me how and I told him she responded, and he asked me where was her legs and I said they were around me, and he asked me did she kiss , me, and I said she did, and then he asked me who put it in Q. Now who slid got us I was a midgroome bile bine I bane

Q. What, if anything, did Joyce do with her clothing when she took them off I main. We have here spandol. A.

A. She folded them up. I watched her and she put them down right beside here setten frie adt dir saw all lie W . A.

Q. Did you tell Detective Collins that you boys discussed

taking a little of that pussy trass-milbid, who and bib ind W. Q

A No I didn't. But he told me that Johnson had told him this. He had a statement and he asked me could it have been said and I told him I didn't hear it.

Q. In other words, you didn't tell him it was said ? ...

A. He said "You might have said it yourself" and I am not sure, I might have, but I don't think I did a call all all all

Q. Did you hear Foster say he was going to call the police" when he left tize a with Christman A systemet Land and A terday about your statement to him?

A Yes I did.

Q. Where were you then I at the man and the stand I'm A

A. I was having intercourse with the girl then. 11 an 77 . 0

Q. What, if anything, did the girl do at that time to M. A.

A. Nothing. She didn't de anything. She didn't holler to him or anything of that sort [fol 173] Q. What, if any, protest did she ever make to using yesterday? you boys!

A. She didn't make any protest at all. As a matter of fact, she assisted us in every way, and ay the fundad I off A

Q. Did the police take your clethes from you when they arrested you the next morning?

A. They did.

Q. You don't know whether or not they had them examined by the Federal Bureau of Investigation; do you?

A. No. I do not.

Q. And you say this girl called you all over!

A. She did. She asked us where we had been so long.

Q. What, if anything, did she tell you about the other people that had been in the car with she and Foster that night?

A. She said they had gone to get some gas some place.

Q. Did she tell you who they were!

A. She said it was some boys in the car. She didn't say how many it was. The odd is should odd at

Q. What, if anything, did she tell you about her being on probation ob dea " extremon feeth lagery many to

A. She did say she was in trouble and she couldn't afford to be caught with us.

Q. What did she suggest to you that you all do? [fol. 174] A. She said we better leave, because if she got caught in the woods that she would have to say it was rape.

Q. When did that happen?

Al Just before the police came. It had add an int wolf Q

Q. Where did you go that night, James.

A. Back down to the Patuxent River.

Q. And spent the night there the had so you had . O

A Yes, sir, chasen a should middenal of their etail of

Q. When did you go home?

A. About 6:00 o'clock the next morning.

Q. And that is when you met the police? The novel of A Yes you land in the age

Q. Have you ever been in any trouble before!

front of it, or pear the back of it?

A. No, I haven'the our lights from Bowie's Athand Will A. ro. 1761 O. Where did you stand by therenhaunt the Q. Have you ever been arrested for any crime before!

A. No, I haven't is in an any or move a substantia and a facil

Mr. Prescott: Thave no further questions.

Cross examination. Q. You don't grow taketheer ore naturalied

ha the Federal By Mr. Cromwell maring threber and yet benime

Ar No. I do not O. James, you remember walking back to Bowie's car and putting fishing tackle in the trunk of the car

A. That is right, all except the smaller poles and we were going to put them on the floor in the back seat, and put the [fol. 175] big ones in the trunk.

Q. How much fishing tackle did you have the hour all the

A. He had one, Johnson had a rod and I had a stick with A. She said it was some boys in it in sood beas at the said A.

Q. What was put in the trunk of the car.

A. Well, the fishing rods, I suppose, and true to tad U.O.

Q. All of that equipment that you have just described?

A. She did say she was in trouble and she los his she A.

Q. Where did you sit in the car, when you got in the car! Did you get in the carl traff nov of tan year one bib fan ?

A. Yes; I got in the back

Q. Where did your brother sit!

A. I don't remember. Land the mand tody by mad W.

Q. How far up the road did you back before you saw this a Ware dideron confinence of the larger un other car &

A. We were about five feet behind it before we saw it.

Q. When did you go bornet

Q. And you all got out of the car then I want tower hath Q

A. That's right; to direct him back.

Q. All three of you!

A. That's right was thereby twen said seele'n (Och mod. A.

Q. Both you and your brother got out! ... is and shirt ... O

A. That's right and the got to at that the and . . .

Q. Did you walk up by the carl are mond of the interest all of

We had to.

A. No. I baven't [fol. 176] Q. Where did you stand by the car, near the front of it; or near the back of it!

4. To the left, in front of it. have a variety had, in will at

Q. Where did your brother stand by the car for boat if A

A. I don't know exactly. and in a said in all it

Q. Now Bowie had his car lights on, didn't he to his I

TA Yes. vod all dith see out milesog ser

Q. And he backed his car, with the car lights on, right up past this car, didn't he?

A. We got in it after he got by.

Q. After he got by the car though; isn't that right!

A. No, he wasn't exactly past the car; he was just about opposite it; a little beyond it.

Q. He had his lights on at that time, didn't he 14 1871 toll

A. That's right, and around the madigatic doom and yeq

Q. And you could see who was inside, couldn't your

A. No, I could not.

Q. With his car lights on you couldn't see two people in that car?

A. You couldn't determine who it was.

Q. You couldn't tell whether it was a boy and a girl'

A No. brown and salth he sould rest if would from I

Q. Do you remember telling the police it was a boy and a girl in the car!

A No; I remember telling him I saw two people.

[fol. 177] Q. Did you hear Bowie's testimony that hew could tell there was a girl in the car?

had salled him comethick.

A. I did.

Q. And he would have been the furtherest away of anybody, isn't that true?

. A. He was in the car; that's all I know.

Q. When Johnson naked one of the people in the car for a cigarette, did you look at the car then, or were you looking away from it?

We had started to bit Johnson was still arguing

A. I was standing behind it.

Q. Did you look in the cart square s don mit wee up

A. You couldn't see anything, because it was dark and dark

Q. How about the car lights from Bowie's car!

with the top and that is why meanined around.

A. He had turned arounded to the a mark your armity of

, , , , , ,	Q. His car had driven past that car, hadn't it had all the
107	A. It backed up past it back redood mov ofb and a
o.	Q. Hadn't his car lights hit that cart are month that I.A.
	A. I am sure they had, but I didn't see it. sawod word to
	Q. As his car was passing the car with the boy and girl
	in it; when Bowie's car was passing it, at what time did
	Johnson ask for a cigarette, after the car had gotten by or
	before! We got in it after he got by.
	A. When Bowie started to turn around.
β.	Q. When he said that didn't you look in the car to see
9	who he was talking to!
	[fol. 178] A. I may have glanced at the car, but I didn't
- W	pay that much attention. It has digit a fad? A.
	O Van bear there was a how in the car didn't you!
	A. I don't know exactly.
	O. You knew there were two people in the car, did you
	The most of that was rest in the tribute of the car.
	A. You have nabing sown belowed the nabinon not in
	D. Did you know one of them was a boy!
	A. I don't know; it just looked like two people to me.
>•	You couldn't determine whether it was two boys or two
	Prison get rathe cart and the transfer transfer to the care transfer transfer to the care transfer transfer to the care transfer tra
	O. After you got past the car after Bowie's car passed,
	what did you do I had be wish did not bid . O [111.101]
	A. Johnson-well, he and the boy were arguing. The boy
	had called him something.
45,20,4	Q. After Johnson asked for a cigarette, did he get a
2.0	cigaretter vere about five feet setund it heart tank shart whom
	A. Yes you all got satisful functions the mey not in sow all A.
	Q. Somebody gave him a cigarette, didn't they!
0	A. Somebody reached across Stewart Foster in site 18319
	Q. Dillyou see him get the cigarette!
	A. I was standing Belind Hardford roos bles now day
	Q. You saw him get a cigarette from somebody in the
	A. You couldn't see anything belonged was linking had
	Q. How about the car lights from Bowie's car T. abY .A
	Q. Where was Bowie's car at that time! he and he hould the
	from af it, or near the back of it?
	9
The State of the S	

O Wan it value broken

[fol. 179] A. It was heading out Batson Boad of him of

Q. Do you mean you didn't know there was a girl in the cartenorth of that wor think to the but below the

A. I didn't know until I seen her in the woods. but the out

Q. How could Bowie have seen there was a girl in the carf as I didn't hear his had been took will a man found up

Mr. Prescott: Objection. The Court: Sustained.

- Q. What did Johnson do with the cigarette after he got Q. You didn't go, then, day your . . Intiff I all !!!
 - A. I suppose he smoked it.
 - Q. Did you all stand around the car then flower and work

A. Johnson was arguing with the boy.

- Q. What were you doing while Johnson was arguing with the boy! neight that stand outside a free more more more and when the boy!
 - A. Standing there with him. I meetle of not hook all .A
 - Q. Were you looking at the person he was arguing with ! A. No. it isn't. A.

A. What do you mean?

Q. Were you looking in the car! that to rettent a an O

- A. I was looking at the person he was talking to.
- Q. You weren't looking anywhere else? Q. And the one that the girl and boy were in hold half

[fol. 180] Q. You knew there was two people in the car, A. No. They were parked off to the side of throw arnbib As Yes, I was a philonal symptom sunvestment will be

Q. But at that point you didn't know there was a girl in the cart out to some the all same add tool A. A.

A. For some tenengies adversaries the police that the Q. Did you hear the statement made that "I am going to drag your ass out of that cart"

A. Johnson told him that if he called him a name again he would do that it mind ban on black they nother town a

Q. Before he had said that, did you all walk back up to Bowie's carf see in the car, wouldn't sell

A No we did not was a server reduced or of O.

Q. You never went back to Bowie's car!

A. We had started to, but Johnson was still arguing with the boy and that is why we turned around.

Q. Did you walk up to Bowie's carf Q. Do you mean you didn't know the tod bib L of An. Q. You heard him testify, didn't you, that he drove up the hill and then came back to you the word their I .A. A. He said John came back Q. And you all stood back of the car! As Yes, the a organity after the ca Q. Was it your brother, John, who went up to Bowie's When Bosic started to turn an [fol. 181] A. I don't recall a an accordant bits smit W. O Q. You didn't go, then, did you? A. Lines have plangthelious of exemples Eich A. No. Q. You stayed at this car; the one with the boy and girl in itt wiew there you out of the ment with the state of the L. A. A. That's right remained while uniob very every tadW .O. Q. When your brother came back, what happened? A. He stood ten to fifteen feet behind us, across the road. O The road isn't that wide at that point, is it! and W .O A. No, it isn't wone of them was thinkn nov ob tad W . A. Q. As a matter of fact it isn't as wide as the distance between you and me, is it it housed at an accident and the A. It's wide enough for two cars to pass. notes, not . O Q. And the one that the girl and boy were in had half fol 180] Q. You knew there was two people theoried to A. No. They were parked off to the side of the road. Q. How far was your brother standing away from this can when you were having this argument? A. About the same distance. Q. Do you remember telling the police that the three of you want ground the back of the car and had a conversation! Somebody reached appropriate to the less they grate of A. No. He said that himself. He asked me had we had a conversation and I said we had been talking all evening. [fol. 183] Q. Did you talk in back of the cart winds (A No. Q. Do you remember saying that you all got together and agreed to drag his ass out of the car and take some A. We had started to, but Johnson was still ar fromed

with the box ged that is way we turned around.

¢

.bib F .A

something.

Johnson had said this and I told him that that might have been said; like I said before, but I never heard him say it. Q. You might have said it, didn't you begin it.

A. No, I didn't. I told him that might have been said but that I didn't hear it at the time, and then he asked me could I have said this and I told him I didn't think I did.

- Q. Did you say you ever had that in mind? to vak Q
- A. No. I didn't.
- Q. You didn't have that in mind at the time?
- A. No. I didn't.

Q. All right, what words did the Foster boy say to you three men standing beside the car that made you start to break the windows in the same and th

A. He called Johnson a "black mother fucker" and he said he had three others coming back who would take care of us when they got back at the said he had three others coming back who would take care of us when they got back at the said three others.

Q. There wasn't any other people there at that time, was there?

[fol. 183] A. Just the two people from hand maren I A

Q Your brother was there, wasn't he till bib great W Q

- . A. Yes, about ten to fifteen feet on the other side of the road. It him who you it out heats ved I would won I do
 - Q. And Johnson was there? .. wonx rabib I mad blot I
 - Q. When did Johnson start to break the white Af
- Q. Can you point out on this picture, State's Exhibit #2, where your brother was standing! you said soil W.A.
 - A. Back here on the side of the road bluew od has shad
- Q. How far would you guess it is from the car to the side of the road! 'ed trail est at heraeque !! A. [081.101]
 - A. I can't determine from that picture.
- Q. Where were you standing at the time this statement was made by the Foster boy, as you claim?
- A. He throw about there obeing all policy of the about there obeing all policy of the control of
 - Q. You could see in the car, wouldn't your and sant. O
 - A. No; it was dark and there was no moon is a tad? .A.
- Q. Do you remember what statement was made after that?

A: Do I remember what?

O. What statement was made by any of you after Foster said what you claim he said. Did you say anything, or did Johnson say anything after that he schools of axis time good A. Yes; Johnson told him he would pull his ass out of the car. He said it again would blot I A abib I ov A [fol. 184] Q. Did he sak for money tand tabib I tad tod could I have said this and I told him I didn't todW. Ad Q. Any of yours of Just bad tore upy yas now bide of A. No. 4 didn't. A. No. Q. Subsequently you got some money, didn't you? A. I did. the street that your A. No. I didn't. Q. But you didn't ask him for any money at that time! Air No. 2 should the sont the sont that aunde work Q. Do you remember saying "I want your money" and he said "no" Do you remember that do L bellas all .A. A. Noes bluewoods abad marined avails agels but ad hiss Q. Do you remember telling the police that! A. No I told the police I didn't say it was a real ! Total Ban Q. Who said it? A. I never heard anybody said it. will tall the the said tall Q. Where did the police get the idea that somebody had A. Yes, about ten to to been four out the other aide Iti bias A. I don't know. They asked me if anybody said it and I told them I didn't know. Foresit asw sounds bak. Q Q. When did Johnson start to break the windows of the corroutlines and this misture sent two and use of A. When the boy told him his three friends would come back and he would take care of us and reached down. A Q. You didn't know why he was reaching down, did you! [fol. 185] A. It appeared to me that he was reaching for A. I can't determine from that picture. something. Q. And the three of you, or just Johnson, started to break the windows of the car in the trates a salt and sainth and A. He threw a stone in the window. and branta taul, A Q. Just one stone nbluew ran silt at one himos nov .Q. A. That's all Leaven saw arout hand hand saw the old ... A. On And you were standing right there! thati

A. Do I remember what!

A. That is right.

0 D	
MARIAO YOU DAYON	any explanation of how the front win-
dow on the right ha	nd side and the back window also were
broken.	A. No.
O Tittle one st	one and the sight, who this the box that and
Q. Little stone or	big stone! frame out to obis board
A. About that siz	e (indicating with fingers). [181 [61]
Million you know	the thickness of the windows on a car
like this?	on back and deep feetomobeles &
A. About a quart	Q. Were you standing than as long
Q. From the way	you threw it, did it break the window
the way it is shown	in this picture! Hid will him to W. O.
A. Which window	Thus Jeff and used over bloom if A
Cither window,	a stone but I think it was his fist; beens
A. I don't think	hit the window I either hit it here
or nere, because 1 di	idn't hear any glage word and hill o
well the one st	one that Johnson throw broke the ball
fror 1901 mindow an	d the front window of the car; is that
righti	A Northbox
A. I suppose so.	Q. Just stood there and watched him
Q. After you brok	e the window, what hannened to deal
A Lought break	the windowshall form move most book O
Q. After the winds	ow was broken, what hannened A
A. The boy jumpe	O How land water word there to be
Q. What did you (to then I sotument assisting as I' A
SASTAN STAIRS OF SELECT	O Dating that ten or hiteen minute
Q. Just stood arou	ndiandewatcheds nov erew indicate nov
A. I just stood the	re. a transfer contratal at the way a W A
Q. What did your	brother dof ferent ambants can l. O.
A. He was across.	the road when the how minned and he
the car and no starte	walking their that half a TRAT half
Q. De was running	wasn't hel marke their ten sold A
A. No, walking at	& fast pace. Trails went wall ()
Q. What was the	Derson that got out on the lottiers
age of the car doing	Was that person runnings
A. LIMBERO	with the street of the street
Q. Do you have an	y idea why !
A. No, I don't.	12 Did yeg call to your brother!
	A. No, we didn't exactly call him.

- 18 d
Q Did you hear any conversation in the car between
the two people in the carfe bas abso based small him the darfe bas abso based small him the darfe based small him the darf
John No. any may ching after that
Q. All right, who hit the boy that got out on the right-
hand side of the car legale lenots gid to equit sliftil .
[fol. 187] A. Johnsonion dattaning sais tad hood. A
Q. Do you remember telling the police that you hit him?
A. No, I do not. Q. Were you standing there when Johnson hit him?
A. That's rights to be the mountains were will more it.
Q. What did he hit him with tank an aworle at it yaw and
. A. It could have been his fist, and it could have been
a stone, but I think it was his fist; because he was too close
to bit him with anything else, we old, digit terms of their and
O. Did the boy fall down to the ground?
We will the one stone that Johnson there's drate and all the
OceWhot did from douthers and both Wolfill Coll did
A Nothing of the matter of the transfer of
O Inst stood there and watched him? We stought I A
A Vastanhanna indundational and solution to the
Q. And then you and Johnson went up in the woods?
Q. Attendine gradow was broken, what happenedox's Ama
Q. How long were you there! And housest you still the
1 A. Ten or fifteen minutes. from the bar bib ted W. O
Q. During that ten or fifteen minute period what were
you doing; were you talking, or what trens boots test. O
baQ. Just standing there! tob restland man his had W. O
A We shorted to walk up through the woods
[fol 188] Q Was that right after the boy fell down!
And Mar not right after the Trans Millim town the
the state of the s
by A Marche temple of minutes, peaced sell sew land
1) Why and your wall wo through the woods?
A. Recause my brother went up there and we went up
Type Mark aff Lance Type and Take Stand Dot Out of
Q. Did you call to your brother? the I Mob I of A
A. No, we didn't exactly call him.

O. Did you have treen fronteen as to the three son each
there you came from Howle's ear to the time amazed det
Why I have write the problem was at which mand
A. Because he was up in the woods and we work
ne mugnit meed some assistance all terrined per analy
Q. Did you hear any noises up there!
A. NO.
Were you calling hear and forth for your hardless
in the Profession of the Party
4. The Meren County will !
A. I didn't call nobody would be greatered that the all to
Q. Did Johnson call!
A. I didn't hear him. I mid at maintran yes not hill o
Q. Did you go back to the car after you started to look
III LIIE WOODS AT DIRECT
A. That is right. a mild raid obside section and all A
[fol. 189] Q. Was that because you couldn't find your
browner in the state of the sta
A. That is right regarded a quarter sight of O
Q. When you got back to the car; what happened?
A. Foster was still on the ground reducines nov off .O.
Q. What did you do then!
A. He was bleeding at the eide of his mouth, way out .0
Q. Did you pick up a stick in the woods?
Q. Was it a big stick that you even I abin on him all A
A. About the size of a broom stick yes od bits you .O.
O. What did you do not be the same of the
Q. What did you do with that stick, when you got back to the cart is an honor of ban aren't anivel saw all A
A. Nothing a via eval Published himsen here via of mode.
Q Did you have it in your hands of haw I abib [121 167]
Aw Yes bad work see of bothers. I has mid that of gaing
Abdid you put it up beside his head? besiener ad bus rand
A. Yes but ad the sair indt here bhe retroup enthem
Q Bowlen For Moits with a stick to I ned wood O.
A. I wasn't standing over him. I guow as well aid
A Your of the second of the se

Q. Did you have it in you	r hands all the time, from the
time von came from Bowie's	car to the time this incident
happened	Q. Why?
A. Thet is right	oth Brothise intentional and
O Were you heating the	bushes with the stick, trying
to find envhody!	Q. Did you hear any notates
real 1901 A. No. I wasn't	o the police that you howout?
O When won got back to	he car and were standing over
the how Stowart Foster was	he unconscious then in A
A. No.	Q. You weren't called him!
	the side of his mouth!
A What is sight	first, retiling mended bides
A. That is right.	Later of the state
Q. Did you say anything	to him! and med saids I do
A. No; he said something	do me.o. And on nov kill .O
Q. What did he say!	in the woods at finishers exten
A. He asked me not to hi	rt him
	(fol. 189) Q. Was that bedm brother!
A. I said I wasn't going t	
Q. You told him you want	ed a quarter high as tad T A
car; what happeneed A	Q. When you got back to the
Q. Do you remember take	ng a quarter out of his pocket?
A. No.	Q. What did you do then!
Q. Do you remember his	giving you a quarter ! A
A. Yes.or dilappease with	Q. Ned you gick up a stick in
Q. Why did he give it to	yout minute period wises I ale.
. A. He said he didn't have	any money. a gid a ti sa W . O
Q. Why did he say that	f nobody mentioned money to
him for the bear made a place	Q. What did you do with that
A. He was laying there	and he looked as if he was
about to cry and he said he	didn't have any money and he
[fol. 191] didn't want to get	durt, and I told him I wasn't
going to hurt him and I w	anted to see how bad he was
	side of his jacket and handed
	A. Yes. Tel. bad ad lin saw t
Q. So when Foster testifie	d that you told him you wanted
his money, he was wrong!	A. I masn't standing over him
A. Yes you call to your !	wother?
A No, we dula't exactly	call him.

Q. Where was Joh	nson at this time! . la needs !! Accou
A. Standing right	behind the carestord moy of the ome
Q. Do you know w	there your brother was at that time?
A. No.	Q. What did she say!
	noise then to account our books when the
A. I think I heard	some leaves cracking, bib mil?
Q. And that made	you go into the woods, didn't it?
A. Yes: we walked	into the woods are off O [881 lot]
Q You didn't mint	A. She hold menths couldn't afford
A. We walked into	the woods see the party see site it bus
Q. How far away w	as the noise you heard town and O
A. I couldn't deter	mine; it was about thirty-five feet
I guess.	of publisher remainder that if of O
Q. It was pretty de	rk in there, want its not enterpres
A. Yes.	a foldstert grant you at beather the flyor
Q. You couldn't see	anything in there, could you!
A Not from the ro	ad notive through what handle the hime
Q. It was very hear	vily wooded, wasn't it!
fol 1921 A. Thatle	to say have strong or aging or aging
Q. With a lot of my	derbrush and bushes and so forth
A. That's right.	A. I don't remember that.
Q. Did von call out	to your brother when you went into
he woods!	A. She didn't exactly say she was
A. Notarita the form	o bus oldness as away had ods him
Q. When you went i	into the woods how long did it take
ou to find your broth	ert instruction between my year war.
A Not very long	the girl sitting side by side, what did
Q. He was laving on	top of the girl then wasn't he!
A. No: she called na	to cono was fraction wasn't net
Q. I am asking von	where your brother was.
A. Sitting beside her	new pands of dueb view and of the
Q. Where was shet	[10] 194] A. That's such as a
A. Sitting beside him	(). Couldn't see anything around
Q. She wasn't laving	g on the ground. She was sitting
erektos mer hora store	Q. I mean the feliage was vent ti
A. That is right	Table of the state
hor Taday stade to a	de anything i
A. When she and he	menn, rou country recognize at plans
The second second second second	THE STATE OF THE S

Q. All three of you came up then, or the two of you came up to your brother then? intight that an interest of

A. Shericalled ms. radioted more weeds would my, of O

Q. What did she say!

A. She asked us where we had been so long.

Q. When did she start talking about her probation!

A. Who start talking the or nov abear tast bat.

[fol. 193] Q. The girl and you of the fundament and

A. She told me she couldn't afford to get in any trouble and it she was caught she would have to say it was rape.

Q. She never made any mention of probation to you?

A. I couldn't determine; it was about think for At

Q. Do you remember testifying to that on your direct examination; that she said she was on probation and couldn't afford to get into trouble?

A. The girl told me she had been in trouble and she couldn't afford to be caught with us. That she would have

to say it was rape if she was caught wan 7207 884 11 . 9

Q. Do you remember saying on your direct examination that the girl said she was on probation?

A. I don't remember that a constant will be

Q. Well she never told you that for how has not ind .

A. She didn't exactly say she was on probation? She said she had been in trouble and couldn't afford to be caught; bein and made shoots attained and only only.

Q. When you walked up and found your brother and the girl sitting side by aide, what did you and Johnson do?

A. We went up to them edit to got no univel now off Q

Q. Right up by her here and he less holden and 10% and

A. Yes. v angerganisation of always particular that the

[fol. 194] A. That's right and to stone award W. D.

Q. Couldn't see anything around there, could your

Q. She wasn't daying im sthe ginasm way ob tadWilA in

A. You couldn't recognize a person, if that's what you mean.

person!

A. I don't think you could recognize a person in those woods.

Q. Now when you came up what did you say to her, after she said "Where have you been so long!" [301 [61]

A. I didn't say anything.

Q. What did Johnson say to her!

- A He told her that we had been looking for her.
 - Q. You told her you were looking for her ton to reducive

A. Not me; he did.

Q: Why was he looking for her to y and said soil ()

A. Why were we looking for her!

Q. Yes.

A. Do you mean did he tell her why we were looking for her?

A. When nov brother come up to us.

Q. Do you know why you were looking for her? A

A Like I said before, we went up in the woods to [fol. 195] assist my brother.

Q. Did you have any reason to believe your brother was in trouble in the woods?

A. He may have; he was in there for some time and we didn't know where he was.

Q. Did you and the other people there have any conversation about who was going to be first!

her and he could be first.

Q. Do you remember making any statement to the police that there was a fight as to who was going to be first?

A. No. I never made that statement. A name to be

Q. Was there any conversation between you and your brother and Johnson as to who was to be first?

A. No. She decided that herself, had ada has chances add

Q. When did you form the idea that you were going to have sexual relations with her?

A. When she took her clothes off the tol vas time I A.

Q. That was at what time?

A. When she said he would be first.

Q. When she said	he could be first, what did you and
	dur then the formatted
	side of blues noy limit fach I .A.
Q. About twenty fe	et back?
A No; ofteen	. G. Now when you comobing setung
[fol. 196] Q. You co	uldn't see what happened there then,
	A. I-didn't say anything.
A. No.	Q. What did Johnson say, to hear i
Q. You couldn't tel	l whether your brother had relations
with her or not!	a randood by survey and biotome Year.
A. No.	you off fifteen feet from them, in this
Q. How long were	you off fifteen feet from them, in this
dark area!	or that not musical our over not W. at.
	er came up to us. on probable Y M
	ber how long you were back fifteen
feet from your brothe	er and the girlf in trouble addeduol
	Q.Dalpoor lecourantly your wave that in
Q. Do you rememb	er telling the police your brother was
	ninutes! (respect time dailing [dill.lol]
A. No.	O Did you have day redery to believe
	ber testifying on direct examination
that you stood back i	or ten or fifteen minutes 1 am of the
A. I said Johnson.	weithdubskussyngmereshe was yes gir
Q. When your bro	ther was with her intransity to the
a A. No.	resection about the was going to be i
	ou stay back while your brother was
	ten minutes! deviced Reliand from the
	Q. Do you remember makes any and
	that there was a fight as to tastituding
	A. No. I never heade that statement
	u don't know what happened, do you,
while your prother a	and the girl were there together, on
the ground, and she	had her clothes off books at the A. A. h.
A Die sald ne did	nt bother here to now his nor W. O
	now what happened, do you have the of
	A. When site took her ciotheon rus
A. Ton comon't m	connection at mandotackin the diswester Co.
Spears, And the second	A. When she said he would to first

Q. Did you walk	back up after a www minutes, to	-
me giri and your or	Conner ware I tribite on tent fries and	
A. Johnson did.	hat he didn't even twoch bent el	T O.
V. 100 didn't wa	k back upf	
and the worker	to you know what your brother	
Q. Why did you s	itay backfun gaethil sant guipul	and the same
A. Because Johns	on said the girt bare harrong (co	guron.
Q. He said he was	going to be next; didn't het	• see America
A. That's right	do you know what they were dail	anode
Q. How did he de	ecide that; did you and he hav	*57 LO143
convergation about	ind when down the afficers lefter the	e any
A. No.	lo you much did't soo him louvin	7 4
Q. Why did he de	ecide to walk up to Did comebod	E Du
him overf	but is right.	A COUTT
	kind the didnitionals over to you, d	
Q. Did your broth	er say anything to Johnson that	Marie,
THE PROPERTY AND CONTRACT	Come were standinger these free T	TI
A. No.	COMME Course and all warms touch and	wande.T
Q. Dut ne just d	legicar it was time les stime	
[10r T90] OAGLI	一种主义的主义是一种的一种的一种的一种的一种。	
A. 138 DBG Started	CONTROL OF THE PROPERTY OF THE PARTY OF THE	1
Q. He had finished	thout how long!	
A. Who had finished	edf in the state viewer and another media	o make the
Q. Your brother w	vas no longer with the girl and	/4UA
Johnson walked over	; is that correct?	
A. Lea -	The same of the second	Total Manager
Q. You don't know	what happened while Johnson	-
there, do you!	what happened while Johnson What did you do; watch Not exactly.	0
A. That is right.	Not exactly 'trac all no sone	
. A. mere end Aou	r brother go after he walked	101
from the girli	. Small hoots tairly	
A. I think he left.	I didn't see him at any time.	.0
W. So you don't kno	ow when he left!	
A. Well I sawihimi	right after, when had dank have a	-040
course with the girling	941 In Turk bond books tempt about	发展等 。4
Q. When was that?	How long did you stand there!	9
A. When he didn't	have intercourse with the girl.	She
our mer		

Q. Did she say that he didn't complete the act?	
A. She said that he didn't. Didn't; period nov bus lain out	
Q. That he didn't even touch her! bib normal A.	
A. That is right at back t fon sloud allow funds but a	1
Q. Do you know what your brother and the girl were	4
doing during that fifteen minutes, while they were on the	
[fol. 199] ground and the girl didn't have any clothes on,	
out in the woods at that time! When you weren't around	
there, do you know what they were doing? hat a tank! A.	7
A. How could I possibly know, if I wasn't around there!	
Q. And when your brother left, did you see him?	
A. Do you mean did I see him leaving?	
Q. There came a time when he left; didn't there?	
A. That is right a name up to us. freve mid	
Q. And he didn't walk over to you, did he?	
Q. Did your brother say anything to doling an the Olm As at	
Q. Were you standing there by yourself then, when	
Johnson went over to this girlf	
	0
Q. But he just decided it was tandfir at the Co.	
Q. And what happened after that? frevo [801.[61]	
A. Then Johnson was having intercourse with the girl.	
Q. About how long! on a fifteen about and bad all Q.	
A. About five minutes ! bedsium bad od W . A	
Q. You walked over to them then taw rediced moy .0	
Johnson walked over: is that correct! .aeX.A.	-
	-
Q. Were they still having intercourse at that time!	
wis A. That de right a demongrad want wond t'neb no! O	
Q. What did you do; watch!	
A. Not exactly, ten minutes the dair ai fail? . A.	
[fol. 200] Q. What did you do lord mov bib grad # Q	
I A. Just stood there. don't know what happen line and mort	,
Q. You didn't look at them? Table I all and addit I ak	Š
	1
the A. Not exactly a handle educate would tuob not of .Q	
Q. You either looked at them, or you didn't was I'llow . A	0
A. I didn't just stand and stare at them is an allig octuon	
Q. How long did you stand thereft that any med W. Q.	
A. Maybe tan or fifteen minutes and Mahib ed nedW . A	
said that	
	1

Q. While they were having intercourse! asw ened W. O. A. That is right. standing there, was he! Q. That would be about twenty minutes then, all to-Q. So your brother left, after his was tit abluow were A. Maybe. . . had ning and told bors about a band and at 1209 doll Q. Where was your brother at that time that as lad! . Sat 2. He came back while you were havingwonstrob I with Q. He wasn't standing around there, was he? A. I didn't see him. Q. Do you know that he had gone, or what mol woH .O A. He probably had gone. I didn't see him! It is sean on intal Q You didn't have any conversation with your brother then, at that time the die bus gomes one and an interest senated would have to say it diese they can then meddiffe Q. And you didn't have any conversation at any time, around that time, with your brother; not until you saw him at the police station; is that right they are stone and [fol. 201] A. No; he came back. Q. When did he come back? A. When I was having intercourse with the girl. Q. Where had he been; do you know. Did he say? When did very stage that that the didn't med W Q. After Johnson finished, did you have intercourse with the girl right away to ran bequest you as now as both. A. I started and the police car came. Inbib. out bus que toy Q. How long had you been having intercourse before you saw the lights on the carf A. Maybe ten minutes; or five rollsdord no unish and tunds Q. Was the siren going on the carf I still W. A. (808.501). Q. You were having this convergation whilesand Awake Q. That is why you stopped; wasn't it? estutopietal guivad Q. When you saw the car did you think it was a police cart. What did John say mat at that points. A. Yes, because Foster had said he was going to call the police. What do you taged the real man new hal Q: So you stopped then; didn't you! his ods sended! Bush play longer sewestive as all seems Mason A. Yes, I did. bus not to.

Q Where was your brother at that time; he wasn't
standing there, was he find the day to be the trail. A
AuNo, he had already left a theath od bluew fail? . O
Q. So your brother left after he was with the girl and
[fol. 202] then came back, and left again? and their old which
dA. That is right and partition that is right and Vice Oli
Q. He came back while you were having intercourse with
her in the washing the off berief animats the say of the
. thAc That is right, what they were demanded inhib i. A
Q. How long did he stay there, while you were having
intercourse with her be sentish He seron had yldedong oil A.
A. We didn't leave until she said we had better leave,
because the police were coming, and if she was caught she
would have to say it was rape; and then we left
Q When did you stop having intercourse with her!
A. When: Lasy the lights of move drive somit fault between
Q. As soon as you saw these lights you stopped having
[fob 201] A. No; he earne book and a reason afternooren
A. That is right. Q. And you got up and ran, didn't you't was had you got up and ran, didn't you't was had you got up and ran.
Q. And you got up and ran, didn't you'd gaw I mad W. A.
A. Well he was there then won i must an had should be
Q. When did you stop having intercourse with the girl?
A. Just before the police car stopped noemot with .
Q. And as soon as you stopped having intercourse, you
A. I started and the police car from think has betrate I. A.
A. That is right a paralle seed next bed and woll O
Q. When did you have this conversation with the girl
A. Maybe ten minutes; or introduced no gride de A. A.
[fol. 203] A. While I was having intercourse with her.
Q. You were having this conversation while you were
Q. Paat is why you stopped: Trail dity Detuorating grivad
A. That is right stigli ed was I saw beques I . A
Q.Did you have conversation with her all the time, or
just at that point!
A. Yes because Foster ! gerallet eat to seem bit ed. A.
Q. Why did you run away!
A. Hecause she said if she was caught in the woods, she
would have to say it was rape. " .hib I as T .A

- Q. And you did run away, didn't you tool from no Y Q A. Of course. any statements; isn't that correct!
 - Q. And where did you run tof this Admirant in the Aha
- A. Back to Patazent River deepig may at whodole O
- Q. And you hadn't had any conversation with your brother at all, had you, since the time he was with that 190 Sala didn't demananthing in your presence to W thing
 - A. No.
- that is right. Q. You do remember having a conversation at the police station, in front of your brother, don't your designations
- A. At which police station it adol asy our bodes off A
 - Q. I mean at the jail. On the 23rd of July, 1961.
- A. No I did not have a conversation with him 18d? A
- Q. Did you go over to the jail with some police officers and see your brotherf off Hill worm ow mody bigs alf A
- [fol. 204] A. I was already at the jail. . . asw od bias ? bus
- Q. Did there come a time during that day when you and your brother were in each other's presence too tend out any
- A. That is right, other people in the line up is conserved. Q. At that time do you remember making the statement "John, you were there when we agreed to take some pussy." Do you remember making that statement? of want of A
- A. No. He asked me was John there and I told him he was and he said when we were with the girl, was he there-

Mr. Prescott: Who said what? (The witness continues) Officer Collins, he asked me.

Cross examination O. Did ne make un v other skett dents both

By Mr. Cromwell: . os daid thob I A (002 for)

- swip in the state of the state
- Q. What did he ask you? . . os shidt rabib I bise I . A A. He asked me was John there and I said that he was. Qie What did John say I ports spew ner raths to someoni

 - A. They didn't let him say nothing.
- Q. What do you mean? Did they have him gagged or something! have a too deep in the day and Asymptotic Day
- A. No. I don't know why he didn't say anything. They probably told him not to.

HT	
Q. You don't know He just stood there and didn't make	
any statements; isn't that correct! .sarsoo 10 .A	
A. That is right ready lefut any now hib grade but Q	
Q. Nobody in your presence told him he couldn't say	
[fol. 205] anything; did they tachait at abad way bah .?	
rother at all had you since the time their at all that	6.70
Q. So he didn't deny anything in your presence!	0
h.A. That is right.	
Q. What statements did you make in the presence of	,
your brothers of how knows estimate mangels most at moulat	· ·
A. He asked me was John there and I said that he was	
Q. That is all that is the Control distinguished a seem L. Q.	
A. That's all he asked meresona alettad for hib in M. A.	
Qarand then you left willing principles or other hid. O	64
A. He said when we were with the girl was John there	1
lol. 204] A. I was already at the mildt saw of bias I bna	1
Do you remember telling the police that your brother	•
was the first one to have intercourse with the girl oid and	
A. Noot is right	
Q. Do you remember telling them that he was with the	3
girl for about afteen minutes true men were there word, who I	. 7
A. No; they didn't ask me for any times redaisher not o	.1
Q. Do you remember making any statements at all, other	•
than that he was there. This is when you and Detective)
Collins and your brother were in each other's presence.	
A. At the Rockville jail (1900) (semi-nessentiwed)	
A. No; there was nothing else said all admission and	
Q. Did he make any other statements!	
[fol. 206] A. I don't think so.	1
Q. You were present at the time, weren't you!	
A. I said I didn't think so. Suov also ed bib tad W.	
Q. After you had left the jail do you recall any of the	•
Har that as after you were arrested de print basell heire	3
- A The Control of the annihilation of the state of the s	
Q. What do you meant Did they owt missw I say d. Ar	
O. Where were they held?	9
WAI Glambint Police Station in view word 1 mb/1 . O.A. A.	
obably told him not to.	X

toQ. How many people were in the line upy [10] | 12001.04 A. About six. the ear is concerned. Q. Do you think there was anything unfair about the Did you identify this spot shows in States Figure Al Absolutely. and talou harmon min another configuration of A. I can't determine from their plettine. Q. Whatf A. We were told to give our names and where we lived before the girl ever came, as a saturnatab Pass nov he at . A Q. This is when you were arrested! I a blood not me I Do A. When she came before us she was told our names and where we lived. Q. She didn't know your name, did she y sand gaitte D Q the woods and were looking for your brother atticoneract. Q. She never asked you your name, did she? back out in the woods, what statement did the storked Mr. Prescott: Objection. [fol. 207] The Court: Sustained. Q. As far as the other people in the line-up is concerned, they were all about your same size, weren't they A Most of them smaller; well, maybe around the same size I will say that dw of vero bedlew I but besence A Q. And she did pick you out of the line-up, didn't she! A. Yes, once my name and address was given her. Q. Did she pick you out of the second line-up, also A. Well she didn't have much of a problem to pick us out then 10 thou sould be a book book after the A Q. After that they took you back to the scene, didn't they; where this incident took place? A. That is right, mostly grown and manner to provide the Q. And you identified the car that was there, didn't you? AloYes fire Tell of two town now vilnespeedus nell' Q. And that picture which is in evidence as State's Exhibits 3 and 4 is . Torkill will saw nosanol, slida to A. A.

Q. These pictures right here. These are fair representations of the car as you saw it on that night, aren't they? A. You couldn't determine.

A. I wouldn't exactly say that.

[fol. 200] Q. I mean as far as the physical appearance of the car is concerned. A. About six. Q. Do you think there was any sent sited to Y. A. Q. Did you identify this spot shown in State's Exhibit #5 as the place where the sexual relations had taken place? A. I can't determine from that picture. Q: Was it a spot like that! A. Well you can't determine from this. I can't and orolled

Q. Can you look at it and see whether it is like the place A. When she eshe before as stepalq soot another and

A. It could be was John there and I madistrib present

Q. Getting back to the time when you were standing in the woods and were looking for your brother. This is after you had gotten the quarter from the Foster boy and went back out in the woods, what statement did the girl make to you as you were walking in the woods with Johnson.

A. She called us and asked us where we had been so long. Level on the law and the

Q. And what did you say se the result of that!

A. Nothing the neigh to the native motive trade Ma sarry vadi

Q. What did you do as the result of what she said to you?

A. Johnson and I walked over to where they were.

Q. When did you leave the spot where your brother and [fol. 209] the girl were the office beautings win some sex . A.

A. She decided that my brother would have intercourse A. Well she didn't have much offer brombert arth and hiw

Q. And then you left and stood back about fifteen to twenty feet see afte of thand energalish year that routh o

A. I wouldn't say fifteen to twenty feet and and gradw; yell

Q. Don't you remember saying fifteen to twenty feet?

A. Yes I remember saying that air feditions is now ba A : 9

Q. Then subsequently you went over to her, after Johnson finished having intercourse with her; is that right?

A. No; while Johnson was still with her. - and A fand Satistich .

Q. And after Johnson finished, then you had intercourse Q. These pictures right here. Theat that tant at rad diw

A. What's right she said to You are next. "a ran out to sanit

Q. In it your position that she raped you fi abluce no I . A

A. I wouldn't exactly say that.

Q. Do you remember telling the police that you didn't have to use any force!

A. No. He said that himself. Mr. Collins said that

Q. What did he say! A. He said (You didn't have to use any force; she gave it to you, huh"; just like that.

Q: What did you say!

A. I said we didn't use any force all terr I and radus A.

Q. Do you remember/his asking you the question "What [fol. 210] would you have done if you had been in the girl's O. Haw long have you been ampleyed there? THE REPORT OF THE PERSON.

A. Yes, he did say that.

Quand what did you say!

A. I told him I wasn't a girl and I couldn't say what I would do . Mart at tout A.

Q. Did the girl appear to you to cooperate?

A. Absolutely.

Q. Do you remember telling the police that if you had been in the girl's place you would have cooperated also? A. No, I did not.

Q. And that wasn't accurate, what Detective Collins said, is that right?

Mr. Karlyr, Lohiochae

A: It was not accurate.

Mr. Cromwelk: That is all. Mr. Prescott: I have no further questions.

The Court: Step down. Him I know as up and no count out

url: Ask another John Henry Gues, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

ric objections was by Bonch Conference examination (19100) dogod

[fol. 211] Q. What is your name! agreemed secretarion

A. John Henry Giles.

Q. Your age retile a risk moltonia splace Lindredges of all. A FIRST eight research find males attrahemotor disolding lighted ity on the Princ Count without expital pun-

PQ SAnd your been patient parlies volume rener of Q.
have to use any force?
A. No. He said that himse the volque browned a read Q.
A. John Hopkins for this most spot gas ad his tad W. O.
Q. How long have you been employed there?
A. Fifteen years, one from the said addition; "dad, no ; of ti
Q. Do you have any other occupations nov bib tadW. Q.
A. Suburban Trust Bankousi von oan i mbas ow buss i . A.
. O What do you do there tilled and wednesder to a fall of
[101. 210] would yet have done if you had been total and [112. 101]
Q. How long have you been employed there?
A. Seven years, to the time and about you the old and Y. A.
Q. Are you the father of these two boys, John and James
Gilester yas Publicon Labra bits a Bushwa Land blot Laber
be A. That is right wells, what statement did the gift being
Q. Mr. Giles, have you ever had any trouble with these
boys before! led as and asked us where wildfulouil. A
bal Norsir; they worked goodulist redmented now our
Mr. Kardy . If Mr. Prescott is going to go into reputa-
tion, I think there are two or three standard questions and
Think the enewer is other type or the
[fol. 212] The Court: You didn't object to it as will A
Mr. Kardy: I object now.
The Court: Too late. Ask another question lewmond all
Mr. Prescott: If Mr. Kardy insists that I go through
Mr. Prescott: If Mr. Kardy maists that I go through the three or four questions I will be glad to do so.) on I
The Court: Ask another question.
Mr. Prescott: I have nothing further. That is the de-
Mr. Kardy: No rebuttal. The State restaurous viab good
Mr. Prescott: May we approach the Bench, your Honor!
The Court, Yes.
A Notwhile Let (Bonch Conference) uimske teerid
O And after Johnson Stabed When you had internative

Mr. Prescott: I make a motion for a directed vardet in behalf of both defendants. John and James Giles, 127

[fol. 213] "The Court: The motion is denied." to "toomday and the evidence. You will make a finding as to each de-

Morion to Withdraw Junes and you a Minimal and sichelibres of Hiw si be Dunnat Troming abro aved aw bavirra

Mr. Prescott: I make a motion for a juror to be withdrawn and a mistrial declared, because there are no negroes on this jury panel.

The Court: The motion is denied. a beautifut your ad I

[Recess.]

Mr. Kardy: The State at this time will abandon the second count, assault with intent to rape, and the third count, assault and battery, and go to the jury on the first count in the indictment, that of rape.

The Court: All right, the second and third counts are

abandoned by the State.

Closing Argument by Mr. Cromwell.

Closing Argument by Mr. Prescott, and ognal ognal.

Closing Argument in Rebuttal by Mr. Kardy, and an raite

During the course of Mr. Kardy's rebuttal argument Mr. Prescott noted an objection to Mr. Kardy referring to the complaining witness's testimony in the lower court regard-[fol. 214] ing the witness having said at one time she was raped by two men and later correcting it to three, which objection was over-ruled.

During the course of Mr. Kardy's rebuttal argument Mr. Prescott noted an objection to the State's Attorney referring to the argument by defense counsel and the fact that he cited laws of Alabama and other states rather than the law of Maryland. This objection was over-ruled by the

Court

What is your name, sirt Triganusco ent basets JUDGE PUGH'S INSTRUCTIONS TO THE JUST

Now, ladies and gentlemen of the jury, the form of your verdict in this case will simply be "Guilty on the First Count" or "Guilty on the First Count without capital punishment" or "Not Guilty", as you shall find from the law and the evidence. You will make a finding as to each defendant under that instruction. Since the lunch hour has arrived we have ordered your lunch and it will be available when you retire to your jury room. Swear the Bailiff.

drawn and a mistrial deci-tology was there are no negroes

on this jury panel. The jury returned a verdict of "Guilty on the First Count" as to both defendants. Hecess. L

Judge Pugh: Mr. Prescott, the State's Attorney accepts the sentencing of these two defendants at 3:00 o'clock on Monday, December 11, 1961, and any evidence you have to offer will be heard at that time.

5th ofmres bridt bas brooms and thair

eger to tell Adjourned.

[fol. 215]

At Rockville, Maryland As No. sir they works which in December 11, 1961 of 3:00 o'clock P.M.

Judge Pugh: Mr. Prescott, do you have any evidence to Offer in this case in H. M. M. M. Aryansyr A wilsold

Mr. Prescott: If it please the Court I would like to call Mr. Strong to the stand, The of policeide as befor those of

James B. Strong, a witness of lawful age, called for examination by counsel for the defendants, and having first been duly aworn, according to law, was examined and testified as follows, upon der a Voise. IM 10 seines am grither

ted Direct examination, exact he refuging a set of garrent. be cited laws of Alabama and other states rather than the

law of Maryland. This objectic these Prescott in the

- Q. What is your name, sir?
- A. James B. Strong, and here are a factor of the state of
- Q. And your occupation?

A Electronics engineer. It to mannet new tens shifted wo N. Count" or "Guilty on the First Count without capital punQi Where do you reside! sale to equipout and willing being?

A. 602 Riding Stable Road, Laurel. A Stand law Day

Q. Do you know the two defendants here, James and John Giles? the private the contracted raise: Anvilour you

A. Yes, I do.

Q. How long have you known them! [fol. 216] A. I expect I have known them between six or seven years.

Q. How did you come to know them!

A. Their father and mother worked for me from time to time, and they have helped out doing farm work around my place, picking corn and things like that. di vint adi ve

Q. What kind of workers were they!

A. They were very good workers. You could leave them by themselves and they kept right on working.

Q. What kind of young men did they appear to you to be!

A. At that time they appeared to be very nice boys. They seemed to be honest and straightforward.

Mr. Prescott: I have no further questions. They remain the con-Mr. Kardy: No questions.

The Court will the telephone of the Court of the Court STATEMENT OF MR. PRESCOTT

Mr. Prescott: That is all I have to offer. If it please your Honor, of course I realize the seriousness and the nature of this charge, and your Honor has heard all the evidence, and there isn't much I can say concerning that, but I certainly feel that this is a case in which the death sentence [fol. 217] should not apply and I sincerely request that your Honor not impose the death sentence upon these boys in this case. They are both young men and they had a good record up until now, and I feel that if your Honor was lenient with them they can in the future make good citizens of the State and the community.

Judge Pugh: James V. Giles, stand up. Have you any reason to assign why the Court should not proceed to sentence you in No. 4590 Criminals, in which you have been in of rail at which the work my

in evidence at this time.

found guilty by the jury of the crime of rape! Anything you want to say! - I have been desired and the said of the first and the said of the first and the f

hames Giles: No, sirebeet about he at tweether took Des arrived is a same ordered your lands and it will itself in the land.

when you refirm to your SENTENCES Swear tobliqueY .A.

Judge Pugh: I-might say to you, Giles, that the verdict of the jury in this case was fully justified under the evidence. You have been convicted of a most serious offense. The crime of rape of a woman has been placed in the same category as murder in the first degree, when the facts justify an unqualified verdict, such as has been rendered by the Jury in this case.

The law protects a woman from unwarranted attacks against her person. You have also violated the natural law of decency, as well as the statute law of this State. Your passionate desire to carnally know this sixteen year old [fol. 218] girl led you to commit violence against her escort, his person and property. You were so ravenous that nothing could prevent you from committing this treacherous act. You were determined to satisfy your passionate desires.

The Jury has placed the responsibility for your future in my hands. I shall not evade it. The purpose of a sentence is twofold; first, to mete out the punishment for the crime committed, and second, to deter others from committing a like offense. By your vicious set, you are not

entitled to any consideration by this Court, district the

It is the sentence of this Court that you, James V. Giles, be taken into custody by the Sheriff of this County and held by him in solitary confinement; that under such guard or guards as he shall determine to be necessary, and as soon hereafter as possible, the said Sheriff shall deliver, you to the Warden of the Maryland Penitentiary, where you shall be placed in solitary confinement under such guard or guards as shall be necessary, until such time as the warrant directing your execution shall name, when you shall suffer death by the administration of a lethal gas—and may God have mercy on your soul.

John G. Giles, stand up. Do you have any reason to assign why the Court should not proceed to sentence you in No. 4590 Criminals, in which you have been found guilty [fol. 219] by the jury of the crime of rape: Anything you want to say!

John G. Giles: I do! onen ranal binad or expense all

Judge Pugh: What do you have to say! I : 1000 off

John G. Giles: Well the girl she said I didn't rape her. I said I didn't rape her and they said I didn't rape her, and so that is all.

John G. Giles: Yes. 29 217 . 210 28 yill asod send anved

Judge Pugh: Of course the jury didn't believe you; and the jury rightly didn't believe you. What I have said to your brother, the co-defendant in this case, applies to you.

It is the sentence of this Court that you, John G. Giles, be taken into custody by the Sheriff of this County and held by him in solitary confinement; that under such guard or guards as he shall determine to be necessary, and as soon hereafter as possible, the said Sheriff shall deliver you to the Warden of the Maryland Penitentiary, where you shall be placed in solitary confinement, under such guard of guards as shall be necessary, until such time as the [fol. 220] warrant directing your execution shall name, when you shall suffer death by the administration of a lethal gas—and may God have mercy on your soul.

Reporter's Certificate [omitted in printing].

[fol. 35]

Transcript of Proceedings on Post Conviction Petition

(Witness nods bend.)

INTRODUCTION OF PETITIONER'S EXHIBIT 1

Mr. Forer: Call John Patrick Stephens. Your Honor, the clerk has the clerk's copy of the transcript of the criminal trial at which these petitioners were convicted; I offer it in evidence at this time.

The Court: Are the summonses here today!

Mr. Forer: The clerk sent it up, the transcript of the criminal trial. It is right there, Your Henor. That is the clerk's copy, a sense to entire of to vivil add va [019.16]

The Court: Mr. Kardy, any objection!

Mr. Kardy: No, Your Henor, none whatsoever. O and b

The Court: Mark it Petitioners' Exhibit Number 1.

Ne objection, be admitted in evidence. Truck bear, a high It place with home test

JOHN PATRICK STEPHENS, was called as a witness and, having first been duly sworn, was examined and testified Sudge, Park. Of course the jury didn't los as follows:

Direct examination.

By Mr. Forer and the property of the common state of the common st

held by him in subtary confinement; that docker such seemed Q. I want to leave that and go back to an earlier matter, the episode in which Joyce Roberts was supposedly raped was Thursday, July 20, 1961. Did you hear about that episode right after it happened ! los at baseld ed limis nov

guerd or guardans that he necessary antil such sussess & ... [fol. 36] Q. All right. Now, that was a Thursday, July 20th; when was the last time you saw Joyce Roberts before that Thursday I fung surve to govern avail bod visit bus - and

A. Saturday before that Thursday.

Q. The Saturday before that!

(Witness nods head.)

Q. Was it in the daytime or the nighttime! 10 MINGELET

Q. Where did you meet her! A. At a place called California Inn in Laurel, Maryland.

it in evidence at this time,

Q. Did you meet her there by pre-arrangement?

A. No, accidental, I mean out all milet in I : 1910 1 .716.

Q. Did you know she was there too a artic but and Artic but

An Before I went brew are mortificate werd town in laint land

h Q. Yes, the specific of the Lay beared, Maray at A. No, I just-

Q. Now, did you and she leave the California Inn in Laurel, Maryland, and go somewhere together!

Q. Did you have a discussion with her as to where you would go A. Yes. She said that—

" joshfo to the all waishill all

Q. What did she say!

A. She said she did not want to go down into the Hyattsville, Maryland, area because she was in trouble on her

Q. Now, where did you got creed live I said true out

A. We stayed at Laurel and went preferably to my house.

Q. And what did you do at your house? he sat is ynomised

A. Went swimming and had sexual relationship. at the party, and as fact this did happen; but this is arti-

Q. Following that did you have a conversation with Joyce ? Mr. Kerett, Begroon pardent govel, tail evert

The Court; To show consontings a lost state att.

Q. What night of the week was this the week was th

A. Saturday night; no regolf angy say reband all Q. And what night was this with reference to the episode of the alleged rape of Thursday, July 20th the bone less of ourse will other people word and the adults in

[fol. 37] Q. Now tell us this conversation.

Mr. Kardy: Yes, Your Honor, polingingary on the W. A. Mr. Kardy: Your Honor, we are going to object. This is before the crime. is right, Mr. Porei.

The Court: I think it is important, Mr. Kardy. I will overrule it. I will hear it, subject to the proffer he has made.

The Witness: She told me that she liked me very much having sexual relations with me. This I could not believe because of so many we do bigs esentive out bas Alat year very L. Dosfer of predicine

By Mr. Forer: Standards here today

Q. Just tell us what was said; not what you believe.

A. Oh. I said, "Well how could you like me so very much with the fact that you had so many relationships with other boys!" She says, she says "That just the last weekend in Baltimore that she went to a party, she was the only girl, and there were about 16 other boys there and she had relations with all of them." O. What did she sav

Mr. Kardy: Object, Your Honor, and move that be stricken. Aldean allega bete mangood good fordivente palit

Mr. Forer: May I be heard on the relevance?

The Court: Yes, I will hear your thin bib andw , med . O

Mr. Forer: This is the same thing that, according to the testimony of the defendants, she told them in the woods. We are not offering this as evidence that in fact she was at the party, and in fact this did happen; but this is evidence that she said this. A Pollowing that

DAC Washingtones

ver bear of out that

The Court: Show consent? Mr. Forer: Beg your pardon? The Court: To show consent?

Mr. Forer: Yes.

A Refered went!

The Court: You want to be heard, Mr. Kardy to land the O

Mr. Kardy: Yes, Your Honor, on the general proposition of law that at the trial this would have been wholly [fol. 38] and totally inadmissible. That prior acts of intercourse with other people would not be admissible in the trial of the case. The Court: Evidence of chastity!

Mr. Kardy: Yes, Your Honor.

The Courts I am inclined to think the State's Attorney is right. Mr. Forer.

Mr. Forer: Your Honor, we are not introducing this as evidence of chastity or unchastity. One of the issues is: Suppose the person uses some peculiar type of expression we know people that almost get to be known because of the way they talk, and the witness said so and so, said some-

thing, and the question is, did he say it or plidn't he say it? Never known this person in his life, and then you can introduce evidence that this person said this identical thing before we are offering this not as proof of chastity or unchastity, but as proof that Joyce Roberts had a line, and the line was to brag that she had 16 or 17 other boys a few nights before when she was consenting to intercourse. That is why we are offering the proof. Has nothing to do with chastity or unchastity. herewwes this at f.

The Court: I am going to sustain the objection and move.

it out of the record.

Mr. Forer: I didn't hear, Your Honor, thans nov off Q

The Court: I sustained the objection, and I will grant the motion of the State's Attorney to move his answer out of the record warm that that the od bluew- aid

Mr. Forer: All right. May I make an offer of proof? The Court: Yes o brown a even vicadorq not set A

Mr. Forer: Perhaps the answer we already—I think he may have already answered the question-well, anyway, I offer to prove that Joyce Roberts told him on this occasion that she had had sexual relations earlier that week with 16 or 17 other boys at the party in Baltimore, and that she was getting back into practice. The red was larged A fol. 401 O. Did you request Dr. Noudoumopoulis to make

[fol. 39] CHARLES DAVID CONNOR, was called as a witness and, having first been duly sworn, was examined and testified as follows:

thid driven somether with him t

if the witness were allowed to answe

Direct examination.

By Mr. Scupi:

Q. Would you state your name? That concede he is a doctor

A. Charles David Connor. ardy: Just a minute, dock

Q. Your office address!

A. 5813 Landover Road, Cheverly, Maryland.
Q. Your occupation?

Q. Your occupation?

A. Doctor of medicine. q of tofto blugw e W stand all

Q. Sometime on or about August 18, 1961, dector, did you have occasion to see Miss Joyce Roberts professionally!

At Yes, I did and has now an end that semabive someout

Q. Do you know where this was that you saw her!

A. Yes. This was in my office in College Park at that time.

with chastity or unchastity.

Direct examination.

Q. Shortly thereafter, later in August, 1961, did you again see Miss Joyce Roberts professionally?

A. Yes, I dideal a loose out marisho era sw vay at last I

Q. Where was this at 7

A. I don't have a record of it with my records here. I believe it was Prince Georges Hospital. Associated to the ti

Q. Do you recall where, which ward of the hospital this. The Court I sustained the objection was I will be saw

A. I believe it was the emergency room.

Q. This would be on the day that Miss Roberts first came to the hospital?

A. Yes. You probably have a record of that in the hospital records. What we rewens and squared trend all

Q. Did you see her on any day thereafter at the hospital?

A. Yes. I saw her each day she was in the hospital.

Q. And on the subsequent days could you tell us what part of the hospital you saw her, which wardf 71 to 81 nitiw

A. I saw her on A Wing, which is the psychiatric ward. [fol. 40] Q. Did you request Dr. Doudoumopoulis to make a psychiatric evaluation of Miss Roberts!

A. Yes. I did.

O. And did he report to you his evaluation or diagnosis of her case!

. A. Yes, he did.

Q. Did you concur with him!

. A. Yes, I did and inclined to think

Q. Could you tell us what that diagnosis or evaluation wast Forery four Honortemananovatale nachled H. Q. A. Churles David Connoi

Mr. Kardy: Just a minute, doctor.

Object, Your Honor. The Court: Objection sustained.

Mr. Scupi: We would offer to prove, Your Honor, that if the witness were allowed to answer-

The Court: I would admit it if you put it in the right manner. The Court: Objection overfuled.

Mr. Scupi: All right. Excuse me, Your Honor.

By Mr. Scupi of noiteed, anibney abser retroged)

Q. Could you tell us what your diagnosis of Miss Roberts' condition was at that time?

Mr. Kardy: Object. The Court: Sustained, unless you lay a foundation.

You trying to show it was based on Dr. Doudoumopoulis' diagnosis, or on his own !

Mr. Scupi: Excuse me, Your Honor.

By Mr. Scupi:

Q: Did you make a diagnosis of your own, independently of Dr. Doudoumopoulis! salle var et empe reside at

A. Xes, I did not be remorated the discount as well disputed I Q. This was from your examinations and conversations with Miss Roberts 1 of than old nove as now of the

gottery County Polich Hegartment, Would who miles Xath Q Could you tell us what your diagnosis of her coudition was at that time!

[fol. 41] Mr. Kardy: Just a minute, doctor. Object out netent of the sent in the north the local sent The Court: Why sand it wildsadagating wor little bestar Object but nelan

Mr. Kardy: This man has not been qualified yet. He is a medical doctor; he is not a psychiatrist. He is going into psychiatric evaluation of another doctor. We object on that ground.

The Court: Well, of course, you didn't ask to have him admitted as an expert. He is a doctor of medicine, but I take it what Mr. Kardy says you concede he is a doctor of medicine?

Mr. Kardy: Yes, at . went as menter I'mb I . Thuo'l as The D

The Court: You object on the ground he is not a psyfeer was interested Mr. Kardy : That is correct district black (1: blood) adli-

The Court: Objection overruled. flooders and accommon

Mr. Senpi: Would you read the pending question, please?

(Reporter reads pending question to the witness.)

The Witness: My diagnosis was that she had an adolescent reaction. condition was at the Th

By Mr. Scupi:

Q. About this time, while Miss Roberts was in the hospital, did you have occasion to discuss her with Montgomery County Police Department officials?

A. I believe I did. I don't recall.

Q. Do you recall where this conversation took place f-

ould by our the our his

Q. Did you make a diagnosis of your sidt saw aradW. Q

A. An officer came to my office in College Park. Now, I thought he was from the Montgomery County Police; he may or may not have been, I honestly cannot say.

[fol. 42] Q. You say you thought he was from the Montgomery County Police Department. Would you tell us what changed your mind, that now you are not sure I was from Montgomery County!

A What changed my mind was because the last time I was here I said I thought it was Mr. Whalen that I had talked with. Now, quite possibly it was not. I did not recognize Mr. Whalen, and it has been three years back I talked with someone. Q. Was the someone you talked to a police officer?

Q. Was he a plainclothes officer

A. Yes, he was trained a staff force no an haddingle Q. Was he from Montgomery County and the last of sales

A. I thought he was. He might have been from Prince Georges County. I don't remember now.

on that ground:

Q Do you recall if you were informed of the interest. of this police officer in Miss Roberts; why the police of ficer was interested.

made notice

Do you know this m

not know for certainty,

aMr. Kardy: Object le I regionder lieunt stignie le consider

that partionlist time this question or whether I discussed ti avoBy! Mr. Scupi savennos utilias mo spollat englistopes sed was the juvenile south here on their of

Q. —in this case! Mr. Kardy: Object, unless they are going to show and preffer to shew it was a Montgomery County police officer; he was in Prince Georges County and she was in Prince Georges County-that being Joyce Roberts ve way of A

The Courts Wells I think in the light of his proffer be immaterial whether he was someone he proffers to show was used by the State, Mr. Kardy, whether it was a named police officer, Princes Georges police officer or one from the Congo. I do not think it makes any difference. I will overrule it semile a but see see abrusers

The By Mr. Scupi : tant stray rotts aby traversel ! A

Q. Do you recall the question?

A. No, sir. Please rephrase it.

Q. Were you told, did you know the interest that this police off er had in Miss Roberts' case?

A. Yes.

[fol. 43] Q. And what was this interest?

A. The interest was in an incident that had occurred previously.

Q. Do you recall what this incident was?

A. Well, it was the time she was raped.

Q. Did you know whether this rape you are referring to occurred in Montgomery County!

A. No. I did not

Q. Did you discuss with this police officer what treatment or care Miss Roberts could—should receive in the future of A. From a medical aspect.

Well, she had been released

ith mercusticast of

A. I told him what I had done.

Q. Did you discuss whether or not Miss Roberts could or should be institutionalised at that time?

A. No. I don't recall whether I discussed with him at that particular time this question or whether I discussed that question later on with someone from I believe it was the juvenile court here.

Q You don't recall whether or not you discussed this

with the police officer's west summer and the place have been

A I don't recall whether I discussed it with him at that pe was in Prince Georges County and she was in Palmit

Q. Do you recall you discussed with this police officer the circumstances that had led to Miss Roberts admission to the hospital, the incident that had led to her admission was used by the State Mr. August whether listinged will ve been saw

. police officer. Princes Georges ubits I eveiled f'nob I An

Q. Now, do you recall whether it was before this discussion or afterwards that you had a discussion with a probation officer!

A. I believe it was afterwards that I talked with the pro-

bation officer.

Q. Do you know this probation officer's name!

A. No, I do not.

embr. Beb wieles 1 wow burn W O. Do you know whether he was from Prince Georges or Montgomery County!

A. I am sorry, I am confused, I can't recall which one

it was from:

Q. Do you recall what court he was associated with!

A. Juvenile court is the only thing I can recall. [fol. 44] Q. Do you recall whether this conversation took place while Miss Roberts was still in the hospital or not?

A. No. she was not

der was interestu

Q. She had been released from the hospital!

A. I think she had been released from the hospital,

Q. Did you know at the time you discussed her case with this probation officer where Miss Roberts was! 11101's

A. Well, she had been released with her mother; I did not know for certainty, but she had been sent home. | A

Q. Now, with this probation officer from the juvenile court did you discuss the circumstances of the incident that had led to Miss Roberts being hospitalized in August of

A. Not any great detail. I discussed her background, I believe, more than the particular incidents our depoter of

Q. You did mention the incident to the probation officers

A. Yes.

Q. Would you tell us what incident that had that you discussed with the probation officer that led to Miss Roberts being hospitalized?

Mr. Kardy: Object.

The Court: He can answer the question "Yes" or "No."

Miss Roberts' bospitalization?

No, my affice recently do not refree refler ym of.

Q. The question was: Would you describe the incident?

The Court: I understood you to say "did you discuss" with him", didn't you! Read the question.

(Reporter reads from the record.)

The Court: I will reverse myself.

Mr. Kardy, why do you object to that!

Mr. Kardy: He said he didn't talk to her about it. I do not think it is tied up properly at this time, as to date, time, or who he discussed it with, and whether this officer, again, was from Montgomery County or Prince Georges.

[fol. 45] The Court: For the reason I gave before I think it is immaterial who the officer was he discussed it with. He was a lay witness; he testified at the trial. I will permit you to put it in.

Do you understand the question.

Do you understand the question!

The Witness: Please repeat it.

Mr. Scupit: I will rephrase it.

By Mr. Scapi: Year Honor Honor : iquos . : id

Q. Would you tell us what incident led to Miss Beberts being hospitalized in August at the Prince Georges General Hospitals and head to be a seen and the second se

Mr. Kardy. Now I object to that, Your Honor. has the The Court: If he knows.

The Witness: At this stage of the proceeding I'd have to refresh my memory by reading my history and the hospital chart rates or salt of restront cut contrate to

By Mr. Scupi: Hebbert bulle en Her mey hips Hips ()

Q. Do you have that history with yout A. No, I do not have the history here, I have only my office records.

Q. Do your office records reflect the incident that led to

Miss Roberts' hospitalization!

A. No, my office records do not reflect any incident about the hospitalization.

Q. Do you recall what form of treatment she received in

the emergency room first time you saw her!

A. If I remember correctly it was gastric lavage.

Q. Does that refresh your recollection as to what led to

her being brought to the hospital?

A. Well, yes. She had taken an excessive quantity of some drug. Now, whether it was aspirin, phenobarbital or what, I can't honestly say. I'd have to look at the records at this time.

Q. Do you know whether or not this excessive dosage

was taken intentionally by Miss Roberts!

Mr. Kardy: Object

[fol. 46] The Court: Objection sustained and and old

You are assuming it was an excessive dose. I suppose it was, but I don't know and the ball ball bear on of

Mr. Scupi: Beg your pardon, Your Honort with MI

The Court: I sustained the objection. I think you are assuming that it was an excessive dose, aren't you'l

Mr. Scupi: Very well, Your Honor. house when the

grandby Mr. Souph trobing felw ar that how filliow Q

Q. This dosage that Miss Roberts had taken of some drug, was it or was it not an excessive dosage!

A. It was an excess of the usual amount of the medication kem for oh I and noisensalb and to han liesen I

Q. Now, from your discussions that you had with the probation officer of the juvenile court, in these discussions did you mention whether or not this dough was intentionally taken to be an excess of the normal desage!

A. I don't recall whether I used the word intentional or

not.

run bonisla frave Q. Whether or not you used the word intentional, doctor, did you use some similar phrase in describing the incident which would convey the impression whether or not it was intentional ! tentional?

A. Yes, I believe I did.

Month of the B. Back B Q. Do you recall what phrase you used in referring to this incident!

A. I believe I implied that she had probably taken it

deliberately.

Q. Now, you said you discussed with the probation officer the history of Miss Roberts. Did you discuss with the probation officer her past sexual experiences? The isn't and to

A. No, I did not.

Q. Did you discuss with the probation officer whether or not Miss Roberts had been involved, in August of 1961, shortly before being admitted to the hospital, in another rape incident besides the one involved here)

Mr. Kardy: Objection, Your Honor of Additing a assumb

The Court: Objection sustained.

[fow 47] Mr. Kardy: And I might say at this time, I don't want to continue objecting. He has been leading the witness right along. I think you should admonish him to get the proper question. They are leading questions, itseless out of

The Court: I will rule when they come. Go ahead.

By Mr. Scupi:

Q. Do you recall whether or not Q. Do you recall anything else you said to the probation officer of juvenile court in this conversation!

The Courts Objection sustained.

A. No, I do not.

Q. You do not recall anything else!

A. I recall part of our discussion, but P do not recall anything relative to any sexual activity or rape, other than the initial incident bersion with a primate for another archidera

Q. Would you tell us what you recall of the conversation that you had with the probation officers and of action ville

A. Am'I at liberty to speak freely for Haber J'aob I . K

The Court: You haven't claimed any privilege; you can go shead and answer best you can. The Court rules on them as they occur seel at senate

The Witness: The question came up as to what to do with this girl. My whole problem was that I felt she had a bad environment at home; there was a lot of friction between the parents, and that the child was having adolescent reaction and should be removed from this environment. Had they been well-to-do they could have sent her to a relatively stable place or sent her off to a camp, or something of this kind, but these people were not

In an effort to get her out of the environment and out of this situation, which I felt was morally depressing to her. I suggested that she either be sent to a training school or some State institution where she could at least get help

to re-establish her emotional situation.

Now, as far as discussing sexual activity with them, anyone else goes, I did not. It is not within my prerogative to discuss a patient's personal problems, other than insofar as

[101. 47] Mr. Kardy, And I might ster at this time, I tol 481 ann By Mr. Seupi: 11 anisotos on the way

Q Is it your recollection, then, that you recommended to the probation officer that she be given some sort of in patient treatment somewhere

A. Yes, I did by well Your Honor the probation officer told you that she sheady was a patient somewhere?

Mr. Kardy: Object Leiding, Your Honor, to resilio

Br. Mr. Sand.

By Mr. Scupl:

Q. Apart from what-do you recall what the probation. officer said to you in his conversation?

A. No. I do not.

Q. You don't recall anything he said!

A.. I don't have any recollection on that, except that he thanked me for my interest, and that was all.

Q. Do you recall whether or not you called him or he called you! Control States of the States

A. He called me.

his light of wenter is thought six found which EVELYS PURDUM, was called as a witness and having first been duly sworn, was examined and testified as follows: Pages in groseedings while comment to which

Direct examination.

The Court Let's see that so called the indistinct of the The Co By Mr. Scupi: and recovered vast upgled trans-

- Q. Would you state your name, please!
- A. Evelyn Burdum a ill ad hard out boband rage (1)
- Q. And your occupation, ma'am!
- A. I am clerk of juvenile court.

The Court: This is the record of Joyce itsburtetion in Q. What county? most work that a staff they the

As Montgomery County, as I assemblined street as T

Q. And did you bring with you the records in a proceed. ing in that court docket number 160661 to Aran bedrooming

Ad Telefaire I. To house torsed odd of the state of grand was

Q. Involving Miss Joyce Roberts? words wall & colont.

[fol 9] (Witness mode head)

Mr. Scupi : Your Honor, we have a permission from the The Court: Of Phat's and side of Stenotice Court juyenile court judge

Mr. Scupi: We have permission from the juvenile court The Court: I take it they explander our

t barn't heen offered year

Mr. Kardy: That is right Just for identification.

By Mr. Scupit worthing workings all ys

Q Do you have those records with you?

officer said to you it his conversation let the story of L . A

Q. Can I see them, please? A. Yes, and with this and aguiltas lines I not not to

(Papers handed to Mr. Scupi by the witness.)

Q. Are these duplicates or majorie harmon of O

A Original spriver west von cut the configure belles

O. I nee.

Mr. Kardy: May I see them!

Mr. Schnis May I see them first fav . M. Carl . Market

Indulge me a moment, Your Honor thoug glab gard Again

(Pause in proceedings while counsel for the petitioners look at papers.) reet examination.

A. Le called me.

The Court: Let's see that so-called "permission" of the invenile court.

Mr. Kardy: Here it is, Your Honor, and how blue We O

(Paper handed to Court by Mr. Kardy!) at a wavel and

Mr. Witt: If Your Honor please, I have the original here. That was the copy I had given to Mr. Kardy.

The Court: This is the record of Joyce Roberts?

Mr. Witt: That is right, Your Honor. I vinated that W Q

The Court: Gentlemen, I am going to put this in the record. Let the record show that counsel for the petitioners introduced here, or mentioned, and the Court asked to see it, what purports to be the permission of Juvenile Court Judge Alfred Noves releasing to the Court and counsel [fol. 50] the records of a juvenile, and mark it for purpose of the record, for identification in the record, Petitioners' Mr. Scupi: Your Honor, we have a per community little

(Petitioners' Exhibit No. 2 was so marked for identification.) Mr. Soupi: We have permission from the day

The Court: I take is they are just examining the recordy it ham't been offered yet?

0.

Mr. Kardy: That is right. Just for identification.

The Court: All rights the petitioners would off

The Court: First mark it Petitioners' Exhibit Numb 3 for identification, to nation out forefrend direction elineral

(Petitioners' Exhibit No. 3 was so marked for identifi-

The Court: It is offered into evidence in between the

Mr. Scupi: Excuse me. Your Hopox, was there two was stition being to the effect, that Joyce was bever tidides as

The Court: I wanted to put for the record Judge Noyes'

Mr. Scupi. Yes. After Mr. Rardy examines the reordinadorg as tag ad birosis a

The Court: Now the record itself is marked for identification. Mr. Rardy, I take it, wants to look at it of our owns. Mr. Kardy: Hal may old old night unition flowing, fig. , tal

The Court: Then I would recommend you make your motion for introduction into evidence, if you desire to do so. I think it was unseasonably made and arthur off bessim

(Panse in proceedings while Mr. Kardy looks at papers)

Mr. Kardy: We would object to the javenile court record going into evidence, Your Honor, without a lainted ad Joyne Roberts was never on probation in Weinte Georgies:

[fol. 51] The Court: The objection is sustained.

"Mari III. : Fried of T Mr. Witt: Your Honor, in order that we may ensure at this time the deputy clerk from Prince Georges County Juvenile Court, I would like to state for the record the stipe lation which we and Mr. Kardy agreed to in your Chambers.

The Court: Just methods the stigmination / You can confer with Mr. Kardy before you get it. Let's get it straight.

(Off record discussion between counsel for both sides.)

Mr. Kardy: Mr. Wift and myself, by way of a three way phone conversation with Judge Loveless, who is the Judge of the Circuit Court in Prince Georges County and sits on juvenile matters, discussed the matter of Jovee Roberts with Judge Loveless (To Mr. Witt), and you correct me if I am mistaken Judge Loveless said, on April 1st, 1961-

Mr. Witt: April 4th.

Mr. Kardy: April 4, 1961, that Mrs. Roberts filed petition with the Juvenile Court for Prince Georges County; petition being, to the effect, that Joyce was beyond parental control. The matter was turned over to a case worker for the Juvenile Court for Prince Georges County, Maryland! That case worker, by letter in the file dated April 14, 1961. stated in her opinion that Joyce should be put on probation. Thereafter the matter came up for hearing on May 9, 1961. Came up again for hearing May 1st, 1961, and September 1st, 1961, which nothing is in the file, and there was no hearing And then on October 9, 1961, the Circuit Court for Prince Georges County sitting as a Juvenile Court dismissed the matter before them; stating that the matter was before the Juvenile Court for Montgomery County, and that Prince Georges had no further—any jurisdiction in the matter. So the record, an Judge Loveless stated, the records, the judicial records in Prince Georges County was that Joyce Roberts was never on probation in Prince Georges [fol 52] County from the date of April 4, 1961, until the matter was dismissed on October 9, 1964.
The Court: All right:

Mr. Kardyan You may add to that sacil mg X ... Hill 34

Mr. Witte That is correct Your Honorough add and Rudt

The Courts You stigulate and agree that is correct?

The Courts All night, let the record show it is so stipuwith Mr. Eardy before you get if. Let's get it straight botal

Of record discussion between counsel for both adeas)

The Court I have it they are just examining the record; it hasn't been offered yet to o

Mr. Kardy: That is right. Just for identification

LYNN ADAMS, was called as a witness and having first been duly sworn, was examined and testified as follows:

Direct examination waste 7 rel tail antitione beaute

"To the Witness Link a minute. Object. By Mr. Forer:

a consequence of the control of the Q Your name is Lynn Adams! idways ton oh wolf Q

Mr. Kuffy hat a change to object. Q. And you are a probation officer in the Tuvenile Court for Montgomery County, Maryland ! mints it to will ther or not first Robert's rightly 457.4

- Printings for a couple of a probe Q. Well, just to be certain I ask you if you could refresh your recollection from this file! Let the record show that I am showing the witness Petitioners' Exhibit Number 3 for identification.
- Q. Were is brought one of this bearing that in late. August Q. Now, it is a fact, is it not, a Lieutenant Detective Whalen of the Montgomery County Police Department was also present at that hearing? ... henigther : inne) ed!

A. Yes, according to my information it was.

Q. It is a fact, is it not, that the charge against Joyce Roberts was that she was out of parental control and living in circumstances endangering her well-being toompobe of

Mr. Kardy: Object, to 1961, how long Autobinemides the [fol. 58] The Court: Sustained a reduction of rains Q Academical new that without a state a tend to buty

By Mr. Forer mesone me suid affir Ange nog bill Q

Q. Was it brought out at this hearing that Joyce Roberts had attempted to commit suicide shortly before the hearingf O. Had you spoken to him about doyen Roberts at a

Qualities was the heavend only tind wor sticke to hint her house. Was a little destrobance over there, out

Mr. Kardy: Just a minute, Mr. Adams. Object orolled smit-The Court: Sustained as Later to any time in Adiso 1904.

this all Mr. Forer with a sa bother som sman A way I

Of Do you recall that at this hearing Lieutenant Whalen stated something that Dr. Connor had told him?

Mr. Kardy: (To the Witness) Just a minute. Object.

.Q. Now, do not answer the next couple questions until Mr. Kardy has a chance to object.

Do you recall that at this hearing there was a statement to change the sentence. At this hearing were there state ments as to whether or not Joyce Roberts required psychiatrio carefue realist sais current over the same and and pa

Mr. Kardy: Object of has I have been all the The Court: Sustained

By Mr. Forer:

Q. Was it brought out at this hearing that in late August of 1961 Joyce Roberts had accused two men of raping her? Mr. Kardy: (To the witness) Just a minute. Object. The Court: Sustained. es selection to my selection it west, at each

tite'T realthin all uniwode ma

The Court: Sustained.

Q. The question is: Did you speak by telephone or otherwise, with a psychiatrist by the name of Dr. Alexander Doudoumopoulis?

As Af what time? here in new March to the All when the

Q. Prior to September 6. 1961 Prior Prior 3 ad P of 66 dol

male Nationalisand on Couber II. 1961.

Q. Did you speak with him on September 6, 19617 d

[fol. 54] Q. Was this a telephone conversation?

Q Had you spoken to him about Joyce Roberts at any time before then ? Zinaba all studies absorb; What Land

A No.

Q. This was the first and only time you spoke to him?

A. Yes.

Q. Did he give you any information regarding the moutal condition or mental health of Joyce Roberts in this conversation that you had with him! a sayat was I dis West

A. Did he you regarding the mental health you

Q. What was the information that he gave you regarding Joyce Roberts' mental health in this convergation?

Mr. Kardy: Just a minute. Object, Your Honor, The Courts Sustained.

Mr. Forer: I offer to prove Your Honor, that if the witness were allowed to answer he would testify that Dr. Doudoumopoulis informed him that Joyce needed psychiatric treatment for a couple years; probably at a rate of Yealk over on Ogiotharpe Street in Hyataka a sono

no effected and Mariney or They got mais and one of the Har O Jasso Dosough was called as a witness and having first been duly sworn, was examined and testified as follows: A. No, I hadn't planned to mind ther, lost I had gone dver

there to pick her up and take her or moitanimaxa toard . a

hard distress to the etry bad By Mr. Scupi:

Miss hoberts on this evening on the street, Oglethorne Q. Mr. Dorough, are you personally acquainted with Miss. Joyce Rebertal and a rese pot los and I - kaid I lis W . A

ON WHILL AND THE CORE

- versation I had, but I'm not sure it I enne ban en a Q And going back to 1961, how long had you known her at that time from requal over yell but focus over bud ade
- A. Period of time. I couldn't really tell you how long it was, but it was some period of time.
 - Q. Would it be weeks, months, or years? s is after the rule of the
 - A. Be months.
 - Q. Some months!

[fol. 55] (Witness nods head.)

Q. Now, did you see Miss Roberts any time in July, 1961? A. Yes, I have taken her out a few times and been over to her house. Was a little disturbance over there.

Q Would you tell us, if you can, the next time you saw ber after July 20, 1961 to you be shiped latered in actifued

A. Well, I saw Joyce either the night after, or couple nights later after she had been out to Spencerville.

Q. First of all, how do you know it was a night couple ing Joyce Hoberts' mental health in this convertetle stagin

A. Because she said something, "I was raped the night before" and I laughed and said "I don't believe it", because of the way she was talking. So I didn't believe her.

Q. Now, where did this conversation take place with Miss

Bobertzi

A Bight down down the street frem her house.

Q. Where she was living at that time?

A. Yeah, over on Oglethorpe Street in Hyattsville.

Q. Tell us the occasion for your meeting Miss Roberts on the street; was this accidental or planned to meet her or been duly sworn, was examined and testified as followtandw

A. No, I hadn't planned to meet her, but I had gone over there to pick her up and take her outpitanimage locall Mr. Keedy: (To the witness) Just a

Q. Would you tell us the conversation that you had with Miss Roberts on this evening on the street, Oglethorpe Street it whereappe villending very our deporal rid . O.

· A. Well. I think-I am not too sure I remember the conversation I had, but I'm not sure if I came back and she told me or not but Joyce said something to me about that she had been raped and they were bigger and better.

The Court: They were what?

The Witness: They were bigger and better than white boys. A. Be months to be a second and a self in W. D.

(101.55) (Winders in the divide of and specially) (65.161) time before them?

Q. Some months!

Q. Now, did you see Miss Roberts any time in Julyo 19614 A. Yes. I have taken her opt at lent times and been lovel to her house. Was a little disturbance over there, saY A

A. Yes, sir. O. Exense me

A Los sir.

By Mr. Will: 6

[fol. 56] LAWRENCE R. WHEREAN, was called as a w and, having first been duly sworn, was examined and testi-Somo Tris office H

Direct examination

By Mr. Witt:

Q. Now, when you went to the Q. Will you state your name, pleased w. b.b. standoff gove b

A. Lawrence B. Wheeler.

Q. Where are you employed, Mr. Wheelerf

A. Detective Sergeant, Prince Georges County Pulice Department.

Q. Were you so employed in September of 1961.

A. Yes, sir.

Q. Sergeant Wheeler, did you have occasion on Septem ber 1, 1961, to interview Joyce Carol Roberts!

(Witness looks at papers.)

A. Yes, sir.

Q. Where did you interview herfit and in shown's hill A. Prince Georges General Hospital, Cheverly, Mary land.

Q. In what portion of the hospital? Jord of which all

A. In-on A Wing.

Q. And what wing is that?

A It is the psychiatric wing.

one at the boupital suc Q. What caused you to go there to interview her!

A. I had received a report that Miss Roberts had allegedly been raped on or about the 26th of August, 1961.

Q. From whom did you receive that report?

Mr. Kardy: Object. This is after the date of the alleged crime or rape in this case.

The Court: I think it is permissible; I will overfule it. He can tell.

The Witness: The complaint came to m Hystoville City Police Department who, I belie inally received it from Mr. John I

Hold D. Lawsensell, Names Wittensell, A. Annesens. L. 166 101]

Q. Did you receive copies of the officer's report of the Her Und Higher Hyattsville City Police! A Yelene for she had been out to Spenders the

Q. Excuse met new de von kannongeneza zonil

A. Yes, sir.

Q. Now, when you went to the hospital to interview Joyce Roberts did you take anyone else with you to your interview? with was laking, we helped W. Il senerwa

A. A nurse that was on A Wing at the time was present ective Sergeant, Princewsivestni vin to smit salt ta

Q. Why did you take the nurse in to the interview?

Mr. Kardy: (To the witness) Just a minute. Object.

The Court: Objection overruled.

The Witness: Any time I interview a female I have someone with me. (Witness look at papers) on or benealer The

By Mr. Witt:

Q. Did anyone at the hospital suggest that you take the L. Pince Georges General Hospital, Claury dividenna

Q. In what portion of the hospital?

Mr. Kardy: Object.

The Court: Why?

Mr. Kardy: Did anyone the question was: 'Did anyone at the hospital suggest-" we don't think that is relevant, material, and it is leading.

Mr. Witt: We want to show who else knew about this

The Court: I will overrule the objection. You can answer that "Yes" or "No", officer.

Mr. Kardy: Object This is after the sive election where

crime-or rane in this case. The Court: I think it is permissible; : HiW. .: M vale it. He can tell.

Q. Who suggested it? A. I believe it was the psychiatrist that I had to get permission from to talk to her. I ... M. mort ti bevisser vilani Q. Did he tell you why you should take a nurse in with resilied he went the the hospital for integrands her atnot

[fol. 58] Mr. Kardy: Object.

The Court: You can answer "Yes" or "No".

The Witness: That I don't recall.

By Mr. Witt and of bose off thede the postorial Q. Do you recall anything other than his telling you to

take a nurse is with you to day two had a

A. Not through the conversation with him. I recall him and well, I was advised by the staff on the wing that I had to get his permission to talk to her. I made a phone call from the hospital to him; he authorized the interview and suggested that I have a nurse accompany me, have or someone from the hospital.

Q. Did anyone on A Wing suggest that you take the nurse in with you also fid vo work or jester I . itua ? ?

A. Not that I recall; no, nire to be see come state, will bed

Q. Will you state the substance of your interview with Joyce Roberts at that time him talent west-old

Mr. Kardy: Object, Your Honor.

Mr. Witt: Your Ronor, this is to show what this police officer knew about this prosecutrix prior to the trial in the CARE

Mr. Kardy: The reason for the objection further, Your Honon this is another case he is investigating, not the case at hand. He wants this officer now to testify what his conversation was about that case. It was an an

The Court: Well, I presume your purport to show that statements were made by the prosecutrix that were inconsistent with the statements the made at the trial of this A. I questioned her in reference to the alleged dieses

Mr. Kardy: I have no objection if the higher add and agree

The Court : that the State's Attorney had knowledge Gestyes County, but had sixtue besterque fine bleddist bus

Mr. Kardyt If it was dealing with this case, and tie it in, I would have no objection. Of course I think my imeas resumes the stand.

objection is proper, because Detective Wheeler has already testified he went to the hospital to interrogate her about [fol. 59] another case, Your Honor, related to this case, and now they ask him to relate the conversation he had with her about that case in August, 1961.

Mr. Witt: Your Honor, it doesn't matter what the conversation was about. We need to know what this police officer knew about this witness that the State used in this case to try these boys here in December of 1961, and I am

asking this witness to find out what he knew i betun a salat

Mr. Kardy: About the Giles-Johnson rape case?

Mr. Witt: Of course to aid ad besives as wel-first -- has

Mr. Kardy: Well- of Hal of holesmost and lay of bad

Mr. Witt: What he knew about this witness, Your Honor, is relevant to the Giles rape case. This was a witness which the State proffered, and to whose credibility the State youched by offering her as a witness.

The Court: Proffer to show by his testimony, to prove that the State suppressed or suborned perjury or knew—

Mr. Witt: We offer to prove by this witness, Your Honor, that the State knew material evidence reflecting very seriously upon this witness' credibility, and they withheld that from the defense in violation of the defendants' constitutional rights.

The Court: I will overrule the objection. I will permit,

Mr. X adv. The valers for the

it if you proffer that.

By Mr. Witt: (al st of continuo de sino, conseil

Q. You may answer the question. Took as w and as revited and

A. Would you repeat the question? I Jow Hard I will

Q. The question was: Will you state the substance of your conversation with Joyce Roberts at that time?

A. I questioned her in reference to the alleged occurrence on the night of August 26, 1961. She stated that two subjects had a party in Edmonston, Maryland, Prince Georges County, had had sexual relations with her against [fol. 60] her will, and questioned her as to the degree of whether any threats were made, and to the degree of her resistance. It was found that one one of the two that had relations with her she offered token resistance; the other one none, and no threats were made.

Mr. Kardy: We object, Your Honor, and move this be stricken. It has nothing to do with this case. It is an entirely separate, distinct case.

Mr. With: Your Honor, what he just testified to is a previous charge by this prosecutrix that she had been raped, and those charges, as he just testified, were made to an officer of the State of Maryland—this man—and it is material which we were not informed of, and it is highly relevant; it is crucial.

Mr. Kardy: When you say "you", you weren't in the

I say this, Your Honor: This is not prior charges, this is subsequent to the rape of July, 1961. This is a separate and distinct case after July. That is why we are moving it be stricken.

Mr. Witt: Your Honor, charges were made prior to trial prior to her testimony at the trial, and any charges of rape made by a prosecutrix prior to trial are relevant, so as to affect her credibility, which she charges rape at the trial.

The Court's Bead me the answer to that question of I

(Reporter reads from the record.)

The Court: You purport to show that at the time of the trial, the question of credibility, that the State knew about this?

Mr. Witt: That is right Your Honor. Rape charges made by her prior to her testimony at the trial of these petitioners.

petitioners.
[fol. 61] The Court: Been here about an hour and forty minutes—clerk just said he wanted a recess. We will recess for 15 minutes and I will rule on it.

and relations with other men and per

the studential feet and

(Witness resumes the stand.)

Do you remember the question? To believe the equations of Mr. Witt: Beg your pardon. Your Honor? In bus, about and

By Mr. Witt.

Q. Detective Wheeler, what further discussion did you have with Joyce Roberts at that time?

Mr. Kardy: Object.

The Court: Objection overruled.

The Witness: I asked her why she had made this complaint. She stated that she hadn't; that she had discussed this occurrence with a friend, I believe it was the day before or two days before, in the hospital, and this friend had relayed this information to her mother, which caused the complaint to be made.

I asked her if she knew the two subjects who had these relations with her. She stated that she did; had known them for sometime. I asked her if she had ever had relations with them in the past. She stated that she had with one. Went into the details of what had occurred; she stated the first instance occurred in the bathroom of the house of the party.

The Court: Officer, said what! It is difficult for me to

understand you.

The Witness: I asked her what had occurred. She stated that the first occurrence was in the house at the place of the occurrence in Edmonston in a party she was at, and she stated she had entered the bathroom of this residence one boy had entered the bathroom behind her shutting the door, and proceeded to have relations with her. When asked [fel. 12] as to her resistance she stated that she had removed his hands from her body several times and that was the extent of the resistance offered. And the second occurrence happened after leaving the house a few minutes later with the second subject, and occurred in the yard of the residence.

(Witness resumes the stand.)

I asked her why she had offered no resistance. She stated that because she felt that if she had relations with either one or both of these boys that they would tell the rest of the boys at the party and everybody would want to do the same thing. Going into her background, as far as relations with—

Mr. Kardy: We object, Your Honor, going into that. We further object again that this testimony be stricken, as a matter of law, from the record. There was no charge of rape made by Joyce Roberts in this case, there was a complaint by her mother, and she admitted the acts of intercourse, and this is just testimony here of showing subsequent acts of intercourse after the date of the rape charge against the Giles Johnson boys. I argued to Your Honor, made the statement in the first instance, that prior acts of intercourse are inadmissible in a rape case. Certainly prior acts are inadmissible; of course subsequent acts are inadmissible. This would not have been admissible in either of the trials in Montgomery County or Prince Georges County. No charge here. The detective is relating what she told him; just a subsequent act of intercourse, and I again renew our objection and move it be stricken from the record as a matter of law.

Mr. Witt: Your Honor, the testimony of this witness

The Court: I know what it was Accusation of rape made.

The Court: Mr. Kardy, of course he has proffered to show doesn't show subordination of perjury of the State's Attorney, but this 331 Fed. 2d, 842, Barbee v. Warden, is [fob 63] a pretty compelling case. I overrule the objection and I deny the motion to move it out of the record.

mili By Mr. Witts of stars direction in Seattive -1/

Q. Now, will you go on to what you were saying.

A. During this interview she also admitted that she had had relations with other men and boys.

Mr. Kardy: We object and move that be stricken by I Mr. Witt: Your Honor, this is knowledge

The Court: Well, I am going to sustain the objection and I move that part out of the record.

Mr. Witt: Your Honor, we ad ind other smio ? waid! small

The Court: Now, you made your point, it seems to me. You have gone into the credibility of this witness; accusation of two men of rape; same breath she said it wasn't rape, that she did it because, apparently—at my words—she was frightened of her mother. Now, that goes to her credibility, and I will consider that. Now, if you are going into her chastity on previous occasion I will sustain any objections to that

Mr. Witt: Your Honor, this is not to show her chastity. We proffer to show by this witness facts which were known to the State which would sufficiently indicate this girl was mentally ill, suffering from nymphomania.

The Court: Se she was suffering from nymphomania. No man has a right to rape a nymphomania. He has no right to rape a prostitute.

Mr. Witt: Of course we do not contend any man has a right to rape a symphomania, but we contend that if the State has evidence a prosecuting witness is nymphomania it is a mental disorder which affects the witness credibility which the defense has a right to show the effect of the credibility. The jury would have the right to decide whether or not the witness was credible, but that fact should be before the jury so they can evaluate the witness they have. We don't contend that this girl couldn't have been raped.

[fol. 64] The Court: You are inferring the State is expert on nymphomania!

Mr. Kardy: I'm not, Your Honor.

Mr. Witt: Contending the State had this information, which we proffer to show by expert testimony is indication of nymphomania, and did not make it available to the detense so the defense on cross-examination, could have

shown there was serious reason to doubt the words of this witness. The State had evidence that her gradibility was extremely doubtful, to say the least used that is the evidence we are seeking to short here.

The Court: Objection sustained: over saw add that are we

Mr. Witt: We offer to prove Your Honor, if this with ness were allowed to testify—

Mr. Kardy: We object to these proffers. Your Honor ruled on the objection. We don't think they should go further what subject— a standard profess of the contract of the contr

The Court: Mr. Kardy, I will hear his proffer. I am not 12 people—just one, and this is a different type of procedure. I will hear your proffer.

Mr. Witt: We offer to show, Your Honor, if this witness were permitted to testify he would testify that Joyce Roberts admitted at that time that she had had numerous acts of sexual intercourse with many boys and men, many of whom were unknown to her in the last two years; that is two years prior to that time. She also admitted to acts is two years prior to that time. She also admitted to acts of numerous acts of oral sodomy with several boys, and, further, that she had had intercourse for pay. That she couldn't begin to tell them how many men and boys she had had intercourse with because there had been so many, and that several times she had had intercourse with up to six or eight boys at a time at parties.

The Court: All right, your proffer is in the record. Mr. Witt: Your indulgence for one moment, Your Honor.

(Off record discussion between counsel for petitioners)

[fol 65] By Mr. Witt: is mornella and A

Q. Now, at the time you interviewed Miss Roberts in August of 1961 did you know that she was a complaining witnessin a rape case here in Montgomery County to Laily witnessin a rape case here in Montgomery County to Laily witnessin a rape case here in Montgomery County to Laily witnessin a rape case here in Montgomery County to Laily witnessin and property and the county to Laily witnessing the county of the county of the county to the county of t

Q.Now, isn't it correct that you stated previously that you had seen the officer's report from the Hyatterille City. Police in connection with this case that you invasionsel?

A. Yes, sin. I'd like to correct that a little bit. At that time I had not seen the report. I did not receive the Hyattaville City officer's report until, oh, one or two days later.

Q. And when you received that report were you then aware that she was involved in a rape case here in Montgomery County!

A. No, sir. we had the area Mulicy to be the how of he area was at

Q. Detective Wheeler, I show you the Hyattsville City police officer's report on this case, and I direct your attention to the second paragraph and ask you if that doesn't refresh your recollection as to whether you were sware that she was involved in another rape case?

A. This is not the report that I received. Here I supposed

Q. Did you ever see that report?

A. No. sir. The standard white the Land destriction rates ased

When did you first learn that she was involved in a rape case here in Montgomery County? In Inuxee to stop

A. I don't recall exactly when it was. I know it was after I talked to her. Just when I couldn't say.

Q. Was it within a matter of weeks, would you say!

A. It was shortly thereafter. I don't know exactly when.

Q. Was it prior to December of 1961 flat at a bad habituor

A. I could not honestly say that long ago, wowe to bud had

Q. Well, did you have a discussion with the father of Joyce Carol Roberts?

A Yes air it again to the property of the state of the All the

Q. When was that it may be were harried mank fruit which

(Witness looks at papers.) word norsaman brown no)

[Tol. 66] A. The afternoon after I had talked with Joyce Roberts. That would have been September the 1st, 1961.

Q. And what did you discuss with him at that time!

A. I had advised him of the finding and the discussion with Joyce. I also advised him at that time that I did not personally feel that there was enough evidence warranting a charge of rape, but I felt that he could charge both subjects, if he so wished to, with contributing to the telin quency of a minor, since they were both over 18 years old.

Q. What did he reply to he believe on a tall talk to A. O.

A. He stated that since that was the case—I believe he stated to me that she was being committed to the House of the Good Shepherd in Baltimore and he didn't wish any further investigation in the case, and he was advised it would be closed as unfounded.

nQ Did he indicate why she was being committed to the

House of the Good Shepherd in Baltimore?

. A Just -I'm not exectly sure. I believe he said something that she had been somewhat of a problem to him as far as correction, had a little difficult time with her, but I don't recall just why he stated that he had this problem.

Q. Did he tell you at that time that she had been raped a month earlier in Montgomery County, and that she was involved in that case?

A. He may have. I don't recall just exactly when it was that I heard this or from whom.

Q. But it was a short time after this interview that you had with her! especially wish to her cintercourse with the

A. That I talked to him, or that I the and sind to house !

Q. That you learned she was involved in a rape case!

A. Short time after; I don't know exactly when, whether it was later that day or some little time afterwards.

Q. Did you have occasion to talk to the girl's mother!

A. No. sir.

The Court: And did I understand you Q. Did you learn how Joyce Roberts came to be in the

hospital at that time?

A. I believe I had been advised that she had taken, allegedly taken an overdose of some kind of tablets. I don't recall being advised of what it was ; a ve basks and bad

Mr. Witt: No further questions, Your Honor, od [80 Jol] one or two cass before, why she had taken this overdose,

[101 67] is the reason standard examination is near said and overdone, and the boy in turn yave this information to her

nation to By Mr. Bardy: a Delword for the art went for

Q. Detective Wheeler; in your investigation your investigation revealed there was no rape case, is that correct?

A. Yes, sir.

Q. And that she consented to the nets of intercourse with the boys! The best will be to be the both of the both

A. More or less, yes, sir. with the white their but belief

Q. And no warrants were issued against the boys in that case Lattible and off Bird Sand off the house distorned to their

A. No. sir.

Q. And the complaint was made by Mrs. Roberts, you Hando to the Table Blancher In the Chings 88 Y 1

would be closed as unformided

A. The report from the Hyattaville City Police Department lists the official complainant as Mr. Roberts, the father.

Mr. Kardy: No further questions. Dan an instruction and and don't recall just why he stated

Mr. Witt: No questions.

The Court! Officer, you did talk to Miss Roberts herself, month estine Montgonery County, and the roy Train involved in that case?

The Witness: Yes, sir.

The Court: And did she say she was raped by these two peoplef

The Witness: She stated that at the time she didn't especially wish to have intercourse with them, but the only reason for this was that she was afraid the rest of the boys at the party would find out about this and also want to have intercourse. That she had on past occasion, or occasions, I don't recall which, had had relations with one of vow have occasion for an these two boys.

The Court: And did I understand you to say that she made the complaint of rape because her mother told her tof

The Witness: No, sir. I asked her why she had made this complaint of rape; she said that she didn't, that she had been asked by a friend-I believe it was one of her [fol. 68] boy friends, or an acquaintance in the hospital one or two days before, why she had taken this overdose. and this is the reason she gave this boy for taking the overdose, and the boy in turn gave this information to her mother without her knowledge. She said the was not making any complaint of rape, and would refuse to testify if a charge was made SHED SEET VILLE BOOK & MILE POLICE WATERCOOK SE

A. Yes. er.

The Courts Did you testify at the trial of the petitioners, the Giles brothers, in December, 19617 P.O.N. silved Hedoll

The Witness & Nophir. ede tada to threes a at ti but . O The Court: Were you interviewed by the State's Attomeytad at tow payof month is bereiter I at 1.40?

The Witness: No, sir. bas bus and tray of Labored add.

The Court: -in relation to the trial of the petitioners in December, 1961 mid over one consorr out saw tadW .Q

The Witness: No, sind to longer meed best one tour!

The Court: Were you interviewed by any of the detectives or police officers of the Montgomery County Police Forcet Mr. Kardyrsko-further quest

The Witness: No. sir.

The Court: Were you interviewed by the Juvenile Court of Montgomery County prior to trial on December, 19611 The Witness: No, sir.

The Witness: The father as

The Court: That is all.

Mr. Kardy: One further question

By Mr. Kardy:

Q Did any defense attorneys talk to you about the case? Al At a later date Mr. Witt had a telephone conversation with me. This was, I believe, at the time of the petition for commutation of sentence to the governor. I don't exactly recall when this was. lemmener of a mider!

Mr. Hardy: No further questions.

[fol. 69] The Court: De you want to excuse the officer! Mr. Witt: No. I think we have one more question, if we The Court: Do you know whether mand theis take At-

torney in Prince Georges Coungoitsmintage toetibed tagts that you recited from the stand prior to December, 1961.

The Witness T don't know wheth the wall vell of. Kir

Do you recall the name of this boy friend that she talked to there? Mr. Witt No questions, Yeur. Honor. The Court Chis

A. Yes, Hyattsville City police report contains this. Robert Bostic, B-0-8-TI-C. radmen of in seembord selie all

Q. And it is a result of what she told him that the com-

plaint of rape was made is that right!

A. Yes. As I gathered it from Joyce, that he had come to the hospital to visit her and ask her why she had taken the overdose, and this is the reason she gave him.

Q. What was the reason she gave him toot reduced in

A. That she had been raped at this party on the night of August 26. The valor spinor and the stand of the bank.

Mr. Witt: No further questions.

Mr. Kardy: No further questions,

The Court: Now, Detective Wheeler, who made the decision not to swear out a warrant against those two men for rapel The Witness No. six.

The Witness: The father.

The Court: Well, were those facts presented to the State's Attorney in Prince Georges County before-

The Witness: No, six research with the har be

The Court: The State's Attorney of Prince Georges County mew nothing about it?

The Witness: Not at that time; no, sir.

The Court: Was never reported to him at all, any facts that would have justified a charge of contributing to the delinquency of a minor! myslerstand water sid

The Witness: He was aware of this case at a later date. Eractly when I don't know. I believe it was upon the [fol 70] petition of the defense for commutation of sentence that he first talked to me about it.

The Court: Do you know whether or not the State's Attorney in Prince Georges County was aware of the facts that you recited from the stand prior to December, 1961?

an The Witness: I don't know whether he was or not, sir.

The Court: All right to but of all lines now on y

civirgo was the

Mr. Witt: No questions Your Honor.

Mr. Kardy: No further questions. The Court: That is all did the said of building

The Court That the would touch that the defendants BARBARA YORE MUSIELAR Was called as a witness and having first been duly sworn, was examined and testified as follows: and to the transfer the state of the transfer the prosecution witnesses, made the following statements a

sair Direct examination and road to owt-owt to yeb

he and Joyce were partied on Bate of Roat and konce kny come up the read. Street had some till to eme

bedienered T againness much some this qual was one side half bed and Q. Do you know Stewart Foster Tol. Per I do union to sever with harmon has feel you'll

Q. Is that the same Stewart Foster that was involved in the case of Giles against the State 7 and to two than and

A. Yes, it is,

Q. Did you know Stewart Foster in July of 1961! blac Yes, I did a me I but , the policy seemes see daily

Q. Were you aware then that he was involved in an incident on the night of July 20th which occurred on Batson Road involving Joyce Roberts 1 200

The Limit was has ladw notice while and transfer

Q. Did you have occasion to hear Stewart describe that incident soon thereafter!

A. Yes, I did world they not part yest till wall

[fol. 71] Q. Approximately when f

A. It was within a week, I am sure. Probably about two ob three days afterwards will about and as

Q. What did he says it; sens the produce and si design to

Mr. Kardy: Object moli mol digit at tad'l thiw all The Court: Come up to the Bench, gentlemen (10) 911

(Bench conference off the record.) oals off the record.)

(Proceedings resumed in open court.)

The Court; Objection sustained and profit of shigh frais that he was a cotorious bar room brawler, he'd enter a

Mr. Witt: Your Honor, in view of your sustaining of the objection we offer to prove that if this witness were permitted to testify-

The Court: That she would testify that the defendants at the trial made a statement inconsistent with what she nasing first bedge the feeting ups examined and testages

Mr. Witt: That Stewart Foster, one of the two principal prosecution witnesses, made the following statements a day or two-two or three days after the incident: That he and Joyce were parked on Batson Road and some guys came up the road. Stewart had some money on him which he hid in his shoe when he saw them coming. They asked him for a cigarette and he told them to get out of here. They left and returned after several minutes asking for thirty cents to buy a pack of eigarettes. He told them "Get the hell out of here you niggers." Thereupon a fight were those facts premittidant the started wire

Now, Your Honor, there are several other matters to which this witness would testify, but I am sure they would come within Your Honor's raling; that is, they are in the nature of newly discoverade evidence, so I think we will just make a proffer as to that also lot were I, aniviouni bao A

The Court: Was this matter, what he discovered, what he proffered to show was that proffered here on the apincident soon thereafter!

pealf

Mr. Witt: Beg your pardon, Your Honor hib Lee Lee [fol. 72] The Court: Was that proffered on the appeal? Did you use that I diverge that I description as well . A

Mr. Witt: Yes, this affidavit was the one which we had

on appeal in the subsequent case; that is right and II Q The Court: As newly discovered evidence!

Mr. Witt: That is right; Your Honor.

The Courte Mistight and and

Mr. Witt: We also offer to prove that if this witness were allowed to testify she would testify that Stewart Foster was an extremely selfance individual; that he'd start fights on numerous occasions without provedation; that he was a notorious bar room brawler, he'd enter a

fair the ed bluon

bar room and challenge anyone there to fight with provocation, and that ever if he was joutnumbered, and that he also habitually used the term black mother to

Mr. Kardy: Of course out objection would go to The Court: I sustained your objection to go and it o Go ahead.

Mr. Witt: This was just put in as offer of proof, Your hat Dr. Course, at the bespital said Montrose or Re-1040.

The Court: Go shead.

Mr. Witt: That is all of this witness.

dent recuiries LLOYD M. WHALEN, was called as a witness and having first been duly sworn, was examined and testified as Reporter reads pending destron to the witness.)

Direct examination and and and train Direct

O De (By Mr. Forer: teobied mov sell : remar . 1M

Q. Will you state your name, please tan'N : two of T

A. Lloyd M. Whalen.

Mr. Forey: May the tiadw ai notiaqueso woy back Que

A. Detective Lieutenant for the Montgomery County Police Department, thoused with or on some a transfer of

[fol, 73] Q. You are stationed at Wheaton-Glemmont Sub-station, isn't that correct?

A. That is correction ar homesor annihowers)

Q. You were also stationed there and you were also a lieutenant of detectives on July 20, 1961, is that correct?

A. That's correct

Q. Were you in charge of the investigation of the alleged rape of Joyce Roberts

Ar Yes, sir our Course nono at beauter against and I.

Q. on July 20, 1961?

A. Yeur dequite understand your ontrated and vilear

Q. Lieutentant it is a fact, is it not that an September 8. 1961 you attended a hearing in Montgomery County Juvenile Court involving Joyce Roberts? tion.

tion.

MA. I attended a hearing. I am not sure of the exact date. hiQ. Breule me the date in fact, was September 5, 1961. that he also believely good the term black toerios that their A. Thatis possible yes saire estude to tybrah ric Q. It was on or about that date anyway! : 1000) ad T A. Yes, sir. Q. Now, do you recall that at that hearing you stated that Dr. Connor at the hospital said Montrose or Rosewood would be all right? The Congress Go aband Mr. Kardy: (To the witness.) Just a minute. Object. The Court: Bead me the question. AMIANW . Id Grown! dre Reporters Yesusiters asw. grove visb good tard (Reporter reads pending question to the witness.) The Court: What do you want to show by that, Mr. Forert Mr. Forer: Beg your pardon! 19104 . M va .. The Court: What do you proffer to show by that, the answer you elicit from that? A. Lloyd M. Whaten. Mr. Forer: May the witness be excused, or may I state it at the Benchistants, and roll tanasturist avitables. A. The Court: Come up to the Bench. .tms.mr.ageff soilog (Bench conference off the record.) Sub-station, isn't that correct [fol. 74] (Proceedings resumed in open courts) and T. A. The Court: You want to withdraw the question to Y O. Mr. Porer Wes. 1881 .08 vint no asymptote to managing The Court: Let the record show Mr. Forer withdrew rape of Joyce Roberts-O. -- on July 20, 1941! By Mr. Forer: Quite me show you a document in hopes that it may refreal your recollection for the purpose of the next ques-

favenile Court involving Jovee Robertst

(Papers handed to witness by Mr. Porer.)

Q. At this juvenile court hearing did you report on something that had been said to you by Dr. Connor!

A. No, sir, I have no knowledge of ever talking to Dr.

Connor.

- Q. Did you report at that juvenile court hearing on something that had been said to you that on something that had been said to one of your subordinates by Dr. Connorf Walte delication
 - A. Not to my knowledge; no, sir I don't recall it.

Q. You don't recall it?

A. No. sir.

By Mr. Porer: Q. If the juvenile court record had a notation that you reported on a conversation with Dr. Connor, could you explain that?

A. I have no recollection of ever talking to Dr. O'Connell. Didn't you took house the comments was property

Q. Dr. Connor.

A. Dr. Connor.

Q. Do you have a recollection speaking to any doctor about Joyce Roberts!

Q. Do you have a recollection whether it was reported to you by anyone working under your supervision, that any of them had spoken to Dr. Connor or any other doctor about Joyce Roberts!

A. No, sir, I have no knowledge of it; other than the doctor at the hospital on the morning of the 21st 1800 of T [fol. 75] Q. Lieutenant Whalen, in connection with your

investigation of this allegation of rape of Juyce Roberts, prior to the trial did you investigate the records of the defendants, John Giles, James, Giles and Joseph Johnson. in another trial; did you or anyone working under you!

A. I don't quite understand your question, Mr. Foren

Q. Did you make any investigation as to the character or record of John and James Giles prior to the trial?

A. No, sir. We received the PBI record back, that is the only investigation that we made.

Q. That is the only investigation that you

Q Did you make any investigation as to the character or record of Joyce Roberts, the complaining witness!

Mr. Kardy: Object, Your Honor.

The Court: P will overrule it. You can answer that "Yes" or "No", officer. The Witness: No, hirology of believer him of tov. A

By Mr. Forer:

Q. When I say "you" I mean you or anyone under your who was participating in the investigation for the police A. That is correct. here do peticollocar on evad I A department.

Q. You don't recall it!

Q. Your answer of "No" still applies!

A. Yes, sir.

Q. And did you or anyone under your supervision, to your knowledge, make any investigation of the character or reputation of Stewart Foster!

A No. sir.

Q. Did you receive any information, or did you hear at any time that Joyce Roberts was mentally disturbed or about Joyce Robertsky as bomeron as mentally ill

Mr. Kardy: Object, ashelwood on event I vis on A

The Court: Overruled. You may answer "Yes" or "No" Q. Lightenant Whalen, in connection w

The Witness: No. sir, I never had any information like prior to the trial did you investigate the records of ted defendants, John Ciperndamosociilesconglatores

[101.76] rehan By Mr. Forer in to pay hib that rentons at

Q: Did you hear that Joyce Roberts, sometime in late August, 1961, had attempted to commit suicide!

Mr. Kardy: Object. Leading question.

Mr. Porer: This is knowledge of a high runking officer in the Montgomery County Police Department and to subs The Court: Objects on the ground it is leading. It is certainly leading.

Mr. Forer: Well, he is an adverse witness. The Court: Oh, you called him as an adverse witness?

Mr. Porer: Yes indeed, Your Honor, M. De riscor I .A.

The Court: Objection overruled and add to 114 W . O

The Witness: I had knowledge of she had taken some By Mr. Forer:

Q. You also had knowledge that as a result of those pills she went to the hospital, is that correct!

A. I believe the information that I received was that she

had taken some pills and was taken to the hospital.

Q. Didn't you receive, whoever you received this information from, wasn't it said—weren't you informed that she had attempted suicide!

A. I don't believe that those exact words were used. They said she had taken a number of sleeping pills.

Q. Who told you this? A. I'm not positive of who advised me of that, whether it was her mother-I'm not positive who informed me of Q. To the best of your recollection?

A. I can't be sure of who informed me of that, I believe it was her mother; I am not positive.

Q. When this person informed you, didn't she say that Joyce Roberts had attempted to take her life!

A. No, sir, I do not remember that the news but [fol. 77] Q. Did you hear that there had been a charge that Joyce Boberts had been raped by two men in August of 1961, just before she took these pills tod to .0 (27 Jol).

A. I received a call from the family stating that the girl had been raped. I asked where it happened; they said Prince Georges County. I advised them to report to the Prince Georges County, and that is the extent of my knowlin the Montgomery County Police Downsmeatant to egge

Q. Didn't you follow up to see what happened to that accusation of rapet certainly leading. ..

A. No. sir, I did not revenue about 16 W the roll of

Q. You received this call in August of 19611 of off

A. I received the call-I am not sure of the date.

Q. Well, at the time you received the call it was represented to you, was it not, that this occurred right after this supposed second rape of Joyce Roberts? sleeping pills.

A. Shortly thereafter; yes, sir.

Q. And you knew that there was soon coming up a trial of John and James Giles on charges that they had raped Joyce Roberts on July 20, 19611

A. Yes, sir.

Q. You knew that, and you made no effort to find out whether or not the second charges, these charges of a later rape were founded or unfounded, or what happened to them? she had attempted suicidet.

Mr. Kardy: I object. He already answered the question. The Court: Let him answer it again. Overruled. Q. Who told you this! The Witness: No, sir.

le of By Mr. Forer; padition of months of that whether to we her mother of the not positive in the second

Q. How long have you been a police officer?

A. Twenty and a half years.

Q. I believe that you already told me that you made no effort to investigate the background or character of Joyce Roberts 5 Joyce Moberts had attended to

A. No. sir.

Q. And even after you heard that she took these pills you made no effort to investigate Joyce Roberts!

As No. mirrom own no h

[fol. 78] Q. Or her background of and erolad tant 1801 to I received a call from the damily stating the lower

Q. Now, you did hear, did you, that Joyce Roberts had been in the care of a psychiatrist?

A. Her mother informed me that she had taken her to see a psychiatrist.

Q. You also heard didn't you, that the psychiatrist said that Joyce needed treatments and would benefit from it?

A. No, sir, I don't have knowledge of that; no, sir.

Well, let me show you this document again, and hope that, perhaps, may refresh your recollection.

The Court: Mr. Forer, there is no objection to that, but what do you intend to show about that? Probably everyone in the courtroom would profit by psychiatric treatment without any offense to anyone. What are you trying to Q. And did you ever hear Joyce Roberts in your pretworks

Mr. Forer: All I am trying to show he knew she was under a psychiatrist's care and had a psychiatric problem, that is all I am intending to show, and the reason I worded the question as I did was because I have reason to believe that those happened to be the exact words that he heard; that is all. I am interested in showing that this official of the State knew that this girl had psychiatric problems; this girl whom he did not investigate. The did not have been bitted in

The Court: Who doesn't have!

Mr. Forer: Well, if they get to a certain point, the obligation to the out some inthe ond in bon sille

The Court: Now you are getting down can you show she was psychotic?

Mr. Forer: You don't have to show she was psychotic. If she is psychotic she may be incompetent.

The Court: I will let him answer it. Objection overruled Q. Were gon also out of the room at

Mr. Kardy: I haven't even objected yet. I was going to at the hospital and Montrose of Hosewood kontobido

-[fol. 79] The Court: My own interpolation. And I meant no offense by saying that probably everyone needed goodhelp all of us a little bit. Mr. Porer: Wichdian the

Mr. Forer: Thank you, Your Honor.

The Court: Go shead.

(Papers handed to witness by Mr. Forer.)

of the ByMr. Porer's land but them falmi resident wolf . A.

Q. I am asking you to take a look at this document. (Indicates) Now, my question is, if I may restate it, weren't you aware that Joyce Roberts had been under the care of a psychiatrist and that the psychiatrist believed that she needed further psychiatric care! Hadn't you heard that!

A. I heard that she was taken to a psychiatrist, but as to the treatment that she received I have no knowledge of

that

Q. And, of course, you didn't trouble to investigate that!

Q. And did you ever hear Joyce Roberts in your presence say that she wanted to die and there was nothing to live under a psychiatrist's care and had a psychiatric nablact

h A. No, sir, not in my presence of quibuotal mis I lie ai fadt

Q. Didn't you ever hear her say in your presence that life doesn't make any difference to her; she does not see any hope of living a happy lifef believed in a 1 the second

the State knew that this girl had psychiatric praison. Als Q. Did you ever hear her say anything like that the his.

Al-No, sir.: Lef him attended the subject the Dod'T Q. Didn't you hear her say that she took 30 Bufferin pills, and in addition took some little pink pills from the The Court: Now you are nothing down thanks anishem

A. No, sir, If I may hear a ration loitodevel and ods

Q. Didn't-what! works of even

Mr. Forer: You don't A. If I may explain. That court hearing I was out of the towarm mid tel

Q. Were you also out of the room at the time when it was reported that Lieutenant Whalen stated that Dr. Connor at the hospital said Montrose or Rosewood would be our . We own interpolation and tadgir lle

The Court Consequence on the part of the Court (Papers insided to wituess by Mr. Perent was suffering

[fol. 80] Mr. Kardy: We object. Juni anivas vo asnesho on

Mr. Forer: Withdraw the question. did offil a sa to lis question. Mr. Forer: Thank you, Your Honor.

tol. By Mr. Porer a comparing an actor a termunitary Q. Now, Lieutenant Whalen, didn't you investigate the records of Prince Georges County to ascertain whether or not there were any proceedings pending against Joyce

A. No, sir, I made no investigation at all,

Q. Lieutenant, I believe you were present at the interrogations of John Giles and James Giles following their

A. I was present part of them; not all of them. Q. Well, they were interrogated separately I believe, is that correct!

A. That is correct; yes, sir no) yremognable as ered bino). Q. And it is a fact that you were present at the first interrogation of each one, is that correct?

A. I was present at the first one on James, and I was there sometime later after John had been picked up, but was not present when he was questioned.

Q. At either of those interrogations did you tell John Giles and James Giles that they had a right to remain silent? The people were because in a so back at their borne,

Mr. Kardy: Object.

ByMs, Kardy: Mr. Forer: Your Honor, bear with me there is no jary here. The stores that driver of meritalities

The Court: Well, I will to all will the out bateaunes I .A. Mr. Forer: There is reason for this, it will develop a vol

The Court: I will overrule the objection. I will permit it. Lean't see anything damaging. The Witness: No, sir.

anted you to hop in Montgomery Conn.

By Mr. Forer: As a separation and and a short all Q. Did any of the other officers present at the interrogation tell them that in your hearing! [fol. 81] Mr. Kardy: Object.

The Court: Overraled. I will permit it lets other distriction?

tangulor a hearpy

A. Budge Moyes,

The Witness: Not in my presence; no sir. 4. 14. 18.

Mr. Forer: No further questions.

o set Cross examination in the language of security to show or

By Mr. Kardy: payablate a fallet at fallacidalle

Q. Lieutenant, there were no proceedings pending against Joyce Roberts in Prince Georges County up to July 21st, 1964, were there?

A. Not to my knowledge; no sir o fring tomoris and I LA

Q. Would you tell Judge Moorman what was the purpose of this hearing on September 6, 19°, in the Juvenile Court here in Montgomery County!

A. The boys in Prince Georges County were harassing the girl, driving back and forth past the house all hours.

Mr. Forer: Just a moment. I object, unless he establishes this is from his knewledge; not from hearsay.

The Court: Do you know this of your own knowledge,

The Witness: I know this is what was reported to me.

By Mr. Kardy:

Q. As a result of what was reported to you, Lieutenant, what did you do?

A. I contacted the juvenile court and made arrangements for a hearing. His till aid to a country a real I : 1910 d . 14.

Q. And what was the purpose of that hearing ! 1000 910

A. Was to place the girl in some place for protective custody.

Mr. Kardy: No further questions.

Q. Did any of the other efficetnottenimens sterified togate

By Mr. Forer:

Q. Well, who did you contact in the juvenile court to drange for a hearing?

tion tell them that an your hea

[fol. 81] Mr. Kardy: Object.

A. Judge Noyes.

[fol. 82] Q. Did you contact Mr. Lynn Adams at all 1 has [101.83] Q .-- ther when you received a call, rie ; o'k r Aall

av Qi Did you tell someone at the jave did you contact anybody besides Judge Noyes? Atmost and Tout sanish of

A. No, sir. Mr. Lynn Adams was at the hearing when we were there, of the exact data. his say; herrios at lad? A.

ii Q. In other words, the hearing was arranged by, with Judge Noves-Prince Georges Consty!

A. Through a secretary and Judge Noves d . 111 . 257 . A. Q. Yes, Did you tell Judge Noves that Joyce Roberts was beyond parental control and a juvenile delinquent as well as a necessary witness for the State?

Mr. Kardy: Object unidityna to osbelwood on had I .K

Mr. Forer: These are the charges, Your Honor.

The Court: That is within the scope of that question, as to the purpose of that particular hearing, I think; isn't it! I will overrule the objection.

The Witness: I never gave him that information as to she was out of parental control. I gave him the information why we wanted to put her in protective custody, because the people were harassing them so bad at their home.

By Mr. Forer: and the sea mail anidiated secree H Q. Did you tell Judge Noyes that Joyce Roberts at that time lived in Prince Georges County?

A Lamsure Ldid; yes, six mor nov to esoque adT .Q Q. Did you tell Judge Noyes that Mrs. Roberts had told you that she couldn't get any satisfaction out of the Prince Georges County juvenile authorities and that is why she wanted you to help in Montgomery County!

A. No, sir, no. That was not our purpose. She never

gave that information.

Q Lieutenant Whalen, when you testified that you recelved a call that Joyce Roberts had been raped in Angust in Prince Georges County, and you said that should be taken up with the Prince Georges County Police Depart. [161.82] Q. Did was contact via ser the Correct ball (A. 168.161)

[fol 83] Q. —then when you received a call, a later call saying that Joyce Roberts was being bothered by some boys in Prince Georges County, then you went and arranged juvenile court proceedings at Montgomery County!

A. That is correct; yes, sir.

Q Did you tell Judge Noves that this girl resided in Prince Georges County!

A. Yes, sir, he had the information where she lived.

Q Did you tell Judges Noves that there was a pending proceeding against her in Prince Georges County Juvenile Court!

A. I had no knowledge of anything pending against her there.

Q. Well, before you went to Judge Noyes and asked that a proceeding be instituted against her in the Montgomery County Juvenile Court, didn't you take any steps to ascertain whether there was a proceeding pending against her in Prince Georges County Juvenile Court

A. I'did not it and the part of bottom on the north

Mr. Forer: No further questions and arew algoed ed asses

Recross examination.

talk tales ByMr. Kardy:

Q. The purpose of your going to see Judge Noves of our Juvenile Court here in Montgomery County was to place Joyce Roberts in protective custody as a State witness, is Georges County juvenile authorities and that Chart Mary Chart

By Mr. Porer:

time lived in Prince Georges Count

A. That is correct nue) vremontheld at gled of ney better

. A. Judge Koves.

Mr. Kardy: No further questions. bull on the old A

Mr. Forer: No further questions.

The Court: Do you recollect the date that it came to your knowledge that Miss Roberts was taken to the hospital and went to the hospital for taking an overdose of something or another, some drug!

The Witness: No, sir, I do not recall the date. It was all the Courte Loub permittit Covernment might wette emos .

The Court: Can you approximate istanti World Like Jail [fol. 84] The Witness: Rough estimate I would say a month after July 21st. It may be a little bit either way. I'm not positive of the exact date song mov at anovas hiel o The Court: All right, that is all.

impy to counsel for the State, and if

explanation as to why we man asking should a drag HENRY E. COLLINS, was called as a witness and, having first been duly sworn, was examined and testified as follows: pretoe Court decision that was decided by the

mare Direct examination; he term that 1 the Maria

- By Mr. Witt: Q. Will you state your name, please? soft to white his to
- A. Kenny E. Collins. 1301 held what he papells A. Q. Where are you employed Mr. Collins to the Collin
- A. Montgomery County Police, assigned to the Wheaton-Glenmont Station. this W sugething brand dev-
 - Q. What is your rank.

 - An Detective corporal. THEA SCHITTE TORREST, OR DESIGNABLE Q. Were you assigned there in July of 19611
 - A. Yes, sir, I was.
- A. Yes, sir, I was. Q. Did you, in July of 1961, have occasion to interrogate John and James Giles ! d blow I has godited two broms
 - A. Yes, sir, I did.
 - Who else was present when you interrogated them!
- A. During the interrogation of James Giles there was Detective Kennedy, Sergeant Harding and Lieutenant Whalen, On John it was Detective Kennedy and Harding, and a later time Lieutenant Whalen.
- Q. As a result of your interrogation of John and James Giles did you take a statement from them?
 - Yes, are we did.
- Q. Did you, before you took the statement, tell them that they had a right to be silent? in last or Justinian X densit

Mr. Kardy: Object of the Court: I will permit to Overruled.

[fol. 85] The Witness: No. sir > product the south of the Parabla Mari Line consider addition, grammatic and a free lead

By Mr. Witt: internal his attraction to the land to the first

Q. Did anyone in your presence tell them that they had a right to be silent?

Mr. Kardy: Object.
The Court: Overruled.

The Witness: No. sir. benefit when any the freed to all

By Mr. Witt:

Q. Now, approximately what date was this interrogation!

A. Of which one, sir ?

Q. Of James Giles Them der miles time of the save liell

A. It was on July 21st, 1961.

Q. And of John Giles 1) All fairefrance mer was right ()

At On July the 23rd, 1961 April 7 visited) visition in the A.

.Q. What is your rank. . sonizesny reliant of MOTION TO AMEND PETITION AND ORDER GRANTING SAME

The Court: Call your next witness.

Mr. Forer: The Court please, before calling our next witness, I would like to move at this time for leave to amend our petition and I would preface the motion by calling the attention of the Court to Maryland Rule BK 41d, which is relating to post conviction proceedings, which states, and I quote, "Amendment of the petition shall be freely allowed in order to do substantial justice."

The amendment that we wish to make and which involves no contested issue of fact, but only an issue of law, is as follows: To add a new paragraph to our petition, read, ing, Petitioners were denied the Assistance of Counsel in violation of the Sixth Amendment to the United States Constitution, made obligatory upon the State by the Fourteenth Amendment, in that at petitioners' trial there was admitted evidence of statements made by them to the police after their arrests in response to interrogations de [fol. 86] signed to elicit incriminating statements, although petitioners had not been warned of their constitutional right to remain silent." That is the end of the proposed amendment.

It might be helpful if I pass up a copy to the Court and a copy to counsel for the State, and if I may add one brief explanation as to why we are asking to amend at this time and why it was not in the original petition. This amendment is offered in accordance with the theory of a Supreme Court decision that was decided by the Supreme Court on the last day of the term that has just passed. It is the case of Escobedo versus Illinois; it was decided on June 22, 1964, and the advance sheets for that last day have not yet come out, but it is reported in 32 U.S. Law Week 4605; as I am sorry, this must have come out since Friday. It also appears in 84 Supreme Court Reporter, page 1758. As we interpret that decision, the majority opinion, and the majority opinion was also interpreted by the Dissent, it is now this is something brand new violation of the right to assistance of counsel to interrogate a person under arrest on whom the police have focused as a likely suspect, without his having been warned of his constitutional right to remain silent.

The Court: Mr. Kardy.

Mr. Kardy: Your Honor, I would say this for the record, we object. I know he can amend, and this is the law as I understand it now, the recent rule of the Supreme Court in Escobedo, but I want the record to show at the time of this trial on December 4, 1961, and also the September trial in Anne Arundel County in September, I believe 26th, 1962, that was not the law in these United States and was not the law in Maryland at either time, and I want the record to reflect that, so that in no way would we acquiesce in this at all. We want our objection for the record.

The Court: All right, motion to amend will be granted.

[fol. 87] STEDMAN PRESCOTT, JR. was called to the stand as a witness and, having first been duly sworn was examined and testified as follows: President single of boards [36 20]

pelitioners had not been warned of their constitutional right Jorgen Direct examination in all w tart? "thesis of will out

By Mr. Soupi: and and the land of the art

The Court: Mr. Reporter, I want you to show I didn't rule on Mr. Kardy's objection on that; the objection to the motion is overruled and the motion will be granted.

emerg By Mr. School blood was tailt noisited trud emerg

- Court on the last day of the term that he Q. Would you state your name, please!
 - A. Stedman Prescott, Jr. onavha wi had their St onut
 - Q. And your office address ! ... tuo ango beyon aven
 - A 8413 Ramsey Avenue, Silver Spring, Maryland.
 - Q. And your occupation, sir! at statute onto il wabit
 - A. I am an attorney-at-law. tergrets aw at. . 251 9269
- Q. Now, in December of 1961, were you the attorney, and did you represent during the trial John and James Giles. in their trial for rape of a Miss Joyce Roberts 1. 1 20 million
 - A. I did.
- a person under arrest on whom the police he Q. Would you tell us whether you were retained or appointed as counsel in that case?
 - A. I was Court appointed.
- Q. And do you recall approximately when you were appointed, what month?
- A. No. I don't: I am sure that docket entries would show that.
- Q. Let me ask you whether or not, Mr. Prescott, you had occasion to visit the home of Miss Joyce Roberts at some
 - A. I did.
 - Q. Do you recall when that wast
- A. No. but it was shortly after I was appointed by the busing it middly little 'A some of the Court

Q. Did you go alone on that occasion? A. Did I do which to tude su the nur blood tolk to gad

[fol. 88] Q. Did you go alone to visit the home to barrow

" A. No, Mr. Victor Crawford had accompanied me. He was also an attorney here who was appointed by the Court to represent Mr. Johnson. Man Palasting and Applying and

Q. Do you recall what day of the week it was that you visited the home final surpoint radio yas bad nov relited was

A. Lam sure I can't; it was a working day, however. I believe it was a Friday, but I am not positive of that at all. Q. By working day, you mean it wasn't Saturday or Sunday, is that correct? not able to see those.

Q Mr. Prescott, at the time of the truthgraitathan Ant Q. Now could you tell us what transpired when you went to the home, who did you see and what was said? I do the bank

A. I saw Mrs. Roberts. We knocked on the door; she came to the door; I also saw, I suppose, Mr. Roberts backing up in the doorway, so to speak, I talked to her; I asked if we could see Joyce; she informed us that Joyce was not at home at the time and wanted to know who we were. We identified ourselves and told her we were Court appointed attorneys for these boys and would like to discuss the case with Joyce, and she said she didn't think that she should probably talk to us about it, but that she would talk to Lt. Whalen and let us know. We gave her, I believe it was Mr. Crawford's card; I didn't have a card with me, with our phone numbers and asked her to call us. She didn't call us, but I called her.

Q. How much later was it when you called her, how

A. Well, it was only a day or so; I don't recall whether it was the next day or the following Monday, 2011 411

Q. Could you tell us what she said in that conversation when you did call her subsequently to you avail to

At She told us that she would not discuss the case with us. As I recall she said she talked to Lt. Whalen and he told her not to discuss the case with us.

Q. Now, Mr. Prescott, at the time of the trial in December of 1961, could you tell us what you knew of the background of Miss Joyce Roberts 1

[fol. 89] A. I knew very little of the background. I knew what the Giles boys had told me she told them at the time this incident had occurred.

Q. Apart from what your clients told you, would you tell

us whether you had any other information from the besize

A: No, we attempted to obtain the records of the Juvenile Court, both here in Montgomery County and Prince Georges County, but they were not released to us. We were not able to see those.

Q. Mr. Prescott, at the time of the trial in December of 1961, did you have any information that Miss Joyce Roberts had attempted to commit suicide in August, 1961?

A. Leaw Mrs. Roberts Was L.A.

San was toward by his bid

Whales and let us know.

A. No. sir.

Q: At the time of the trial in December of 1961, did you have any information that Miss Roberts had in August and September, 1961, been in a psychiatric ward of Prince Georges General Hospital?

A. No, sire

Q. At the time of the trial, did you have any information that Miss Joyce Roberts, the prosecutrix, had been diagnosed by a psychiatrist as having a mental illness?

A. No.

Mr. Kardy: Object to that, no testimony to that here. I don't know whether adolescent reaction is mental illness. Object.

The Court: Objection overruled.

The Witness: No, sir, I had no knowledge of it.

By Mr. Scupi: "Of anime for the rate of the state of the

Q. Did you have any information at the time of the trial that in September and October, 1961, Miss Roberts had been in Montrose during September and October?

A. No, sir, I had no knowledge of that the tag to blot

Q. Did you have any information to corroborate the fact that in July, 1961, there were Juvenile Court charges pending in Prince Georges County against Miss Roberts! A. No, sir. As I say, we were unable to obtain those records. We had hearsay to that effect, but that is all [fol. 90] Q. By hearsay, Mr. Prescott, you mean the information from your clients!

A. From my clients, yes igniotation bad I sis of A Q. Apart from what your clients told you, Mr. Prescott, did you have any information at the time of the trial that Miss Roberts was, shall we say, a promiscuous woman

Mr. Kardy: Object.

The Court: Objection sustained been well become well best nor even and well thoses 1 . 14.0

Frid By Mr. Scupi said said of the poderson a need

Q. Did you have any information at the time of the trial to verify the fact that Mr. Stewart Foster, State's witness at the trial, was, in fact, a notorious brawler f

Mr. Kardy: Just a minute, Mr. Prescott. Object. The Court: Sustained, 12 1207 1211 Crica boys to this case, did you come to see me, as

By Mr. Scupi: lasta and astronia of your

Q. Did you have any information at the time of the trial that Stewart Foster had, a day or two after the alleged rape, given an account of the incident in his home to his family and friends which contradicted the account that he gave at the trial! ban I bus now that noisengeib out Hispor

tell me that you had been over the beid on tall and

o'The Courts Overraled willings the to arow has sovel, attiv

Mr. Kardy: Object ther questy them gulffuods thou out

The Witness No. 101 This will writer or the best the

Mr. Kardy: Object as leading. Prin Ministration of the Property of the Propert The Court: All right, move it out of the record. I will reverse myself. You may give me the reason. The Witheser That is correct, Your House,

\$. 4

You want to rephrase the preceding question!

ing in Prince Georges County serious Miss Medicard Colors

Q. Did you have any information that Mr. Stewart Foster had given prior inconsistent accounts of the events of July 20, inconsistent with his trial testimony?

A. No, sir. I had no information to that effect.

Mr. Scupi: Thank you. That is all we have, Your Honer,

Mass Hobership was Made and

Cross examination.

By Mr. Kardy:

Q. Mr. Prescott, how long have you practiced law and been a member of the bar of the State of Maryland, Sir!

A. Since 1946.

Q And since that time to the present time, have you served in any official capacity in the State of Maryland?

A. I have been an Assistant Attorney General and also

Q. Mr. Prescott, after your appointment as counsel for the Giles boys in this case, did you come to see me, as State's Attorney, to discuss the case!

A. I did.

Q. And would you relate to His Honor what that discussion consisted of and what, if anything, I let you see and have in the case?

A. You let me have your entire file as I recall. I don't recall the discussion that you and I had; I think you did tell me that you had been over this case quite carefully with Joyce and were of the opinion that she was telling you the truth about the matter.

Q. And by the entire file, did I let you read the police report in its entirety, sir!

The County All right, move at our of the rabib wor An reverse myself. You may give me the renson,

Q. Mr. Prescott, you said you made efforts in Montgomery County and Prince Georges County in regard to the Javenile Court, so on that basis you knew there was some action or proceeding in both jurisdictions flow and and

A. No, they didn't even go so far as to tell me that; they just told me that I could not have the records that they had there. The information I got concerning that came from the Giles boys themselves a Legard benitest agenfly

[fol. 92] Mr. Kardy: No further questions, Your Honor. Mr. Scupi: Indulge me a moment, Your Honor.

(Off the record discussion between counsel for the defendants.) if ornivery bill toessative was deducated and

he recognize apparatual

Mr. Scupi: I have another question, Your Honor.

Redirect examination The Court: Do you have any knowledge, Mr. Presont

By Mr. Scupi bearedus vegrotta s'etata edi tadi

Q. Mr. Prescott, you have referred to the information you had from your clients with respect to Juvenile Court charges pending against Miss Roberts; could you tell us what that information was that you got from your clients! A. Well, I think it shows in the record, I don't know. What they told me was that when they first went up with Joyce that she had suggested that they have intercourse with one another; that she had told them that if anything happened, she would have to claim she was raped because she was on probation from the one of the Juvenile Courts, and I think the record discloses that, need terit mived bas

Mr. Scupi: Thank you casion on or should as bestit

Mr. Kardy: No further questions.

Mr. Scupi: No further questions designation for the

The Court: Mr. Prescott, I understood you to say that Mr. Kardy, while you were preparing for the trial and before trial, let you see his complete file, including the police reports? A. Marion E. Roberts.

The Witness: That is correct, Your Honof.

The Court: And you are satisfied that Mr. Kardy did show you the police reports, which he didn't have to do

The Witness: Well, Lam not sure he didn't have to; but he did show them to me. Your Honor, to did the willow

The Court: (Well, were these police reports introduced in syidence) were all stand for himself and but had

[fol. 93] The Witness: Not to my knowledge. The police officers testified themselves, Your Honor.

The Court: Now do you have any knowledge that you could give the Court that in relation to the allegations of the petitioners that certain witnesses perjured themselves with the knowledge of the State's Attorney? Do you have any knowledge that any witnesses did perjure themselves with the knowledge of the State's Attorney?

The Witness: No, Your Honor, I don't have any such knowledge.

knowledge.

The Court: Do you have any knowledge, Mr. Prescott, that the State's Attorney suborned perjury?

The Witness: No, sir.

The Court: Do you have any knowledge that would help the Court that would reflect that the State's Attorney knowingly suppressed evidence which would have been beneficial to the defendants?

The Witness: No, I don't have any personal knowledge of that, Your Honor.

Joyce that she had successful thank the state of the entire with one another; the contract that the talk the track that the particular than the was rependent three to claim the was rependent three to claim the was rependent.

Marion Rossers was called to the stand as a witness and, having first been duly sworn was examined and test tified as follows:

Mr. Scupi. No further question mitaminer of the Mr. Scupi.

The Court Mr. Prysecit, I understood on the

Q Will you state your name, please for tel laint broad

A. Marion E. Roberts.

police reports?

The Witness: That is correct, Your Honor.

Q. And your address? SOY O A. 3803 Oglethorpe Street, Hyattsville, Maryland Q. Are you the mother of Joyce Carol Roberts 2 Joyce was taken to Prince Georges County lina Lak in [fol. 94] Q. Is that the same Joyce Carol Roberts that

was involved in the case of State versus Giles? A. Yes, observed the war the occasions of lost

Q. Now, Mrs. Roberts, on or about August 26, 1961, did anything unsual happen in your family is all HaW . A

Mr. Kardy: Object senseib yac eved gov bib woll O

The Court: Overruled.

The Witness: I don't know the date of anything unusual happening except-

that time about whether she she

The Court: All right, she has answered the question.

Mr. Witt: Your Honor, may it be recognized that this is an adverse witness! Demission and in the Courts of the The Court: What the Han of aved they now there Lou Land

Mr. Witt: May it be recognized that this is an adverse witness ! ... They obeat to have the think the HE

The Court: Do you have anything to say, Mr. Kardy! Mr. Kardy: They have called her as their witness. She hasn't said anything yet except her name.

Mr. Witt: Well, Your Honor, there may be the necessity for a little bit of leading with the witness. I ask that it be recognized that she is adverse about the second will all the

The Court: All right, go ahead.

Mr. Witt: Thank you.

You know batter that that the beside opposite that Oby

the By Mr. Witt: it up here time after there feather Aon ; Q. Do you recall an occasion on or about August 26, 1961, when Joyce was taken to Prince Georges County Hospital? I thid you agree with his decision!

A. No, I was not.

herev

Q. Not you Mrs. Boberts, Joyce design which and / A. Oh, Joyce tell as how it was carried out?

The Witness: Judge Moornage mayor Isa sagal Wood Lat

Nicken

And you are sale transfeld thou had go A. Joyce did not call mel . Fortiel e pronting 0 1080 at Q. No, the question was do you recall an occasion when Joyce was taken to Prince Georges County Hospital in fact 94 1 Color of the said ford Carol Roberts On the Jack was involved in the case of State versus Gillest _ seY . A [fol. 95] Q. —of 1961? What was the occasion for her being taken there to indicate and all wor. O'. A. Well, she said she took some pills, I tankon zaathans Q. Now did you have any discussion with her doctor at that time about whether she should come home after being hospitalized? The Witness 1 don't know the date of say A. Yes. Q. And will you tell us what this discussion was! Mr. Kardy: Lobject ti vam ronell mel : 1771 . 174 The Court: Objection sustained. tasactiw paraybo us si The Court: You will have to call the doctor, wolf of Pa Mr. Witt: May it be recognized that this is an adverse-By Mr. Witt: Q. Did you decide that Joyce should not come home from the hospital, or should be sent some place for safekeeping? Mr. Kardy: Object made name! 1907 How : HiW . 1M The Court: I will everrule it a minael to tid elffil a to? The Witness: No, I didn't decide, si she that bezingoost The Court: All right, go alead. By Mr. Witt: Mr. Witt: Thank you. Q. Did someone decide! A. Yea, aret been day awars was called all and tes-Q. Do you recall an occasion on or thebiseb on W. 9 1961, when Joyce was taken to Prince cropped ad L. A. Q. Did you agree with his decision! Hospital Mr. Kardy: Object. A. No. I was not. The Court: Overrule it; you can answer that question yes or no. name, please? The Witness: Yes.

Incorre Well, if you know of this with reconst

Q. Now will you tell us what you did in order to carry out that decision!

Mr. Kardy: Object o worse not il anomon a faut.

The Court of Objection overfuled wants in a substwood

The Witness: What I did to not trivial at M. [70.10]

You have answered the question, "Yes," [fol. 96] By Mr. Witt:

Q. Yes, ma'am out blos retent ent off all

A. I didn't do anything, at last the like truo) and

Q. Do you know how that decision was carried out?

Mr. Kardy: Object.

The Court; Why, Mr. Kardy

Mr. Kardy: Because the doctor is the best witness in this case, and getting back to what decision was made and did she agree with the doctor's decision, I think it's all objectionable. They ought to have the doctor here.

The Court: Mr. Reporter, read the question and answer.

(Reporter reads from the record.)

The Court: She has answered the question. Objection be overruled.

Mr. Witt: Will you tell us then how it was carried out? The Court: If she knows of her own personal knowledge. Now, counsel, I want you to keep away from hearsay. You know better than that. There is no reason why the Court should sit up here time after time letting you do that. Let's keep that out. If she knows of her own personal knowledge how it was carried out, she can testify

By M. Witt: Told seem agited of the will am

The Witness: No. I am not sure, Q. Will you tell us how it was carried out?

The Witness: Judge Moorman, may I say a word right heref

The Court: Well, if you know of your own personal knowledge how the decision was carried out, what was done, if saything. The form of your question is, I think, a bit confusing, being he is asking a question.

Just a moment. If you know of your own personal knowledge, as distinguished from what someone told you. [fol. 97] Mrs. Roberts, then you may go shead and explain it. You have answered the question, "Yes," that you did know.

The Witness: Well, the doctor told me and

The Court: All right, that is enough. She doesn't know of her own personal knowledge, and work would pay off .O.

By Mr. Witt:

Q. Well, were you aware there was a proceeding in Montgomery County Juvenile Court to commit Joyce to Montrose School for Girls! this case, and getting halfered

Mr. Kardy: Just a minute Object, Your Honor, and bib

The Court: I think she can answer that yes or no. Over-The Court: Mr. Reporter, read the question and an below

Reporter reads from the runor

The Witness: Yes.

The Court: She has shawered the this work very on

Q. Were you present at that proceeding? A Yes

Q. Now prior to that proceeding, did you have any conversations with Lieutenant Whalen of the Montgomery

ves or no.

(No response.) on with his decision?

Mr. Witt: My question was, are you sure about that? The Witness: No. I am not sure. O. Willivon tell us how it was earlied out!

The Witness: Judge Moorman, may I say a word High

Q. So you may have had some discussion with Licutenant Whalen?

A. I didn't have any discussion, I don't think

Q. Did you talk to him't to anivil adyol saw and W Q

A. I have spoken to the many of course, womin' I al A.

Q. Did you talk to him before that proceeding!

A. Yes, once. The position in the Juvanois Coxtension [fol. 98] Q. Did you talk to him about instituting that proceeding, about starting that proceeding? Q [00.101]

A. The proceeding of getting Joyce into the school?

will sustain it. Les oh vest bit to

Q. Yes.

A Oh, yes gin until their sault gir anin Q. Will you tell us what you fold him in that conversatell them that you wanted dovoe it noit

A. I told him that since the incident of July the 20th, that the place had just been a bedlam; there were carloads of people coming by and harassing us night after night and we would have to stand guard, my two sons and my husband and myself, get tag numbers, get identifications, and I asked him what we could do and what we should do to put Joyce in a place where she would not be harmed.

Q. Did you tell him that you had raised a problem with the Prince Georges County Police first

Mr. Kardy: Object. We are going now, Your Honor, from September or October, 1961, back to April of 1961. Mr. Witt: No, Your Honor.

The Court: Well, I don't see where that question could be so vicious as to hurt anything. I will overrule the objection. You may answer.

The Witness: What was the question again?

Mr. Witt: Would the reporter read the question?

(Reporter reads from the record.)

The Witness: No. This problem was not concerning the Prince Georges Police. These incidents happened be-Juvenile Court against your desighters is it newstrongs? cause of the incident of July the 20th, and that it why we tening hamstold some bad eval van nev by o

By Mr. Witte

3

- A I didn't have been distilled a Q. Where was Joyce living at this time, in what county !
- A. In Prince Georges County.

 Q. Didn't you, in fact, speak with the Prince Georges
 County Police!
- A. Loslied the police night aftermight to dome up there. [fol. 99] Q. They didn't do anything for youth ambassors
 - A. Ven they diden sovot, anthrop to gathernown will A.
 - Q. What did they do!
- A. They came up there night after night, and they caught peoples in min blot now tody as llet now firW .Q.
- Q. Didn't you tell them that you wanted Joyce to be conswhere away from home less donies sent sentis blob focks o
- A No. Idid not it confied a meed tent had sonly est tank charge against Joyce in Prince Georges County, isn't it! husband and my sell, got last nembers and braden

This Court: What alo you want to put that in for you Mr. Witte May we approach t' bench, Your Honort Mr. Kardy: Me jary; I don't see why we have to apthe Prince Georges County Police first! Anne ed thanon

The Court! No jury, but on the merits of your case, e what that has to do with the charge of rape. Come up here; I will talk to you. Hittis Non Your

The Court: Well, I (askersburg doned broger add 199)

(Proceedings then resumed in open court,) not so ed the Court of will suctein it as to the form of the que-

Mr. Witt: Would the reporter read the applicate moit

by Mr. Witt: "Thomer all thors abuse assumed it.

Q The w fact, limb it Mrs. Roberts, that you had bre d proceedings to the vance deorges County Juvenile Court against your daughter, is it not?

Mr. Karty: Object series ! and our chill celled The Court: The form of the question of a would be no doubt if there was a jury on the affecting me particularly, but I will suctain i . The Courts it has never come belong the ballion O Did you sign a petition in the Juvenile Court for Prince Georges County alleging that your daughter was (Johnson, Mir. Karty, Object The Courts I will sustain it. Let me ask her a question.

You may poper if you like, it inst may be overraied though. You can record your objections. The Court Mrs. Reports at about the time you are speaking of, had you petitioned the Court for the purpo of determining whether or not your child was a delinque child? of an is nighted liw I Jady to Jordon and brown to The Witness: No. See if you can do it. William . Me Witt: With Your Honor The Court: I have ruled on it. You: HiW rell re ques-Q. You did not make such a petition on April 4, 1961 Mr. Kardy: Object. She has already answered the ques-The Court I thought I had led her right into 'as a soit The Court: I will permit her to answer. Overruled marphil Mr. Witt: The petition we have seen on countil edT The Court: I don't know what A states, Olaw put It in By Mr. Within now it it conborted has won assessive Mr. Witt: Your Honor promisity ballond tooy : HIW aM The Court . No. 1 didn't if didn'ted what to No. 1 and Q Did myone in your family of the habitant was providing and the way and the party of the later and the same Mac Witt: Mr. Reporter, may I have the Judge's qu iour read back? worden that there, a friend my objections The Reporter: Yes, sirand there was nothing that would (Reporter reads from the record.) saviding to the effect

By Mr. With: 10 10 10 Deposed to the Res. 10 10

Q. Had you in April of 1961, petitioned the Juvenile Court of Prince Georges County for the purpose of deter-nining whether your child was beyond your control?

Mr. Kardy: Object." Wing at this time, in

The Court: I am going to sustain the objection as to form, Counsel; the form of your question here. This prosecutrez and these parents have some rights too, and the inte the decimal the way the come off the way are questions are put—I will sustain it as to form. I see what you are [fol. 101] trying to get at, but thy to get it in minical it doesn't either me, but the interpretations put on this by other well-manning people; I think you ought to respect the rights of this family. Ken are assuming she was beyond her control. Now, I don't think you have any right to her control. Now, it was a think you have
shame her in the presume of the United States, this
County here to create the impression that justified rape,
or beyond her control, or what. I will sustain it as to form
See if you can do it.

Mr. With With Your Honor-

The Court I have ruled on it. You can put the ques tion again.

Mr. Witt: May I state Your Honor, the question was in the same form that Your Honor had put it friend . the

The Court: I thought I had led her right into "as a delinquent % That is why ladid it tunned live i . 1100) and Mr. Witt: The patition we have seen states with both

The Court: I don't know what it states. Now put it in idence new and introduce it if you want to. 114. (d.

Mr. Witt: Your Honor prohibited us from doing that.

The Court: No. I didn't—prohibited what?
Mr. Witt: Prohibited the introducing into evidence of the petition that was filed against this woman's daughter in Prince Georges County.

Mr. Kardy's Movies been offered offers Honor. Stipulated the a fact, but it also Roberts, that I shad been on visuals in that of proceedings in the Posts of 1999 and T.

Javenije Court against Theorets all mort shaw to trope H)

The Court No avidence is him again the and (a). Live of least it, there is Mr. Kardy's Charte tight. We both tall tingend sensent, sail on tunelerol. agin The Court It has never come before the Court Q along with your questioning. Overtile it as to for stop this quibbling

[fol. 102] By Mr. Witt:

C Subsequent to that does Q. Had you had any discussions with the Probation O eer in Prince Georges County regarding your daughter?

31.4. 11. 18

answered that bea

Mr. Kardy: Object. The Court: Overruled and Whalen that you had senden

Mr. Kardy: As to what time, Your Honor.

The Court: Overraled Answer yes or no, then you can put the time in: Mr. Witt: That's right. Your Monorry: searing and there was such a petition filed. These questions are increased

By Mr. Witt: " Thington mouth tell alog contaileng ionite I prochle Couldent M. C. tomp a od C.

Q. When!

A. I don't remember the date.

A. I don't remember the date.

Q. Was it before July 20, 1961; read answered that is a remaind the first of the same and t

A Yes

Q. In what connection did you have those discussions!

Mr. Kardy: Object. and he had attented accorded soning

The Court: Overruled one shiften mor blot tant I . A

him was askut, that is, the place was becoming (Sense)

of terror, that we buildn't get any sleep from The Witness: In what connections - h vitt new tant their

The County Do you understand the question Mrs. Roberts 1 of meldery fair of brager differ abit routing times?

The Witness: Well, there are several connections; I mean the only thing-I had discussions with this Probation Officer, a woman that I knew, a friend; my oldest son was in the conversation and there was nothing that would petition—we signed no petition or anything to the effect

at Joyce was he delinquent child. It was a discussion, and the reason I went to her one I wanted to know what I should do in case Joyce continued to stay out later than what I had given her a time limit on I had given her a time limit of what time to come in, and on several occasions abs had disobeyed the time limit; and that was what my displacions were about 1980) gentella are more than prola form. Counsely the form of your question and displaint mots.

[fol. 108] the By Mr. Wittre scoot rights the

Q. Subsequent to that discussion, was any petition filed ainst Joyce in this Prince Georges County Juvenile Prince Giorges County in acting Courth

A. No.

The Court: Counsel, did you and Mr. Kardy correct me if I am wrong about this but I understand you stipulated

Mr. Kandyr Objector Arth Listened recin

A. I don't remember the date.

yesterday that that very petition was filed.

Mr. Witt: That's right, Your Honor; it's in the record there was such a petition filed. These questions are merely BOME. Witt:

preliminary to her discussion.

The Court: All right on it. You can Phasew O

By Mr. Witt:

Q. Now going back to your discussion with Lieutenant Whalen at the time just prior to Joyce's commitment to Montrose, what did you tell him about Joyce's situation in Prince Georges County to we have see togisto, tybrell al

A. I just told you awhile ago what my discussion with him was about, that is, the place was becoming a bedlam of terror, that we couldn't get any sleep from night to

night; that was my discussion with him. ... swent World and Did the suggest that you see the Prince Goorges County authorities with regard to that problem? Latterfold

The Court Oversuled was not an incident coming from, polition we signed no polition or Manne aw-notified

Mary and that I saled if the diet The Witness: He suggested to cell the Hyattsville Poher which I had done time, after time, and they could do nothing about the situation until I got fag numbers and identifications. ethar petition and a

[fol. 104] By Mr. Witt: A you tellegely to be with the

Q. Did you tell Lieutement Whalen that the Hyattsville Police could de nothing about it? It who bold tament the

A No. I don't believe I went into detail about them not being able to do unything about it. They could do come-

Q. Did you tell Lieutenant Whalen that you had spoken to the Probation Officer in Prince Georges County

A I don't know whether I went that far back or not, no, I don't think so.

Q. You might have! At No, I don't think st.

Q. Well, what, if anything, did you tell him about Prince Georges County Juvenile Court and Joyce's involvement there?

Mr. Kardy: Object. She has already answered that two or three times.

The Court: Overruled. Let her answer it again.

The Witness: I don't know what you mean by Montgomery County Police, and he knew all about what happened in Montgomery County, I believe. not restingual the

By Mr. Witt: adolf 2112 wond nov 11 % Things a least

Q. In Prince Georges County you mean!

A. Prince Georges. I believe you said Montgomery, didn't you.

Q. No, Prince Georges County, filed avail helf .of amiral

A Nothing going on in Prince Georges County until after the July incident. Everything was peaceful and quiet with us.

Q. Are you aware that there was a petition against your aughter, dismissed on October 9, 1961, in Prince Georges County Juvanile Court I or to the county of the destrict of the

(Pause,) at the same with half went but he light wood.

recision and two letters astronomed the control trans-

Q. What was that petition!

Mr. Kardy: Object.

Liot 1051 The Court: Overruled trong list now hill

The Witness: I don't know of any petition really as far as that is concerned, but this was after the incident of July the 20th; everything happened after that I don't know what you are referring to, but his vall bara to toods said!

Dr Mr. Witt

Mr. Witt: I am referring to the petition that you know was dismissed on October 9, 1961.

The Witness: I don't know of-I don't recognize the date relay that that very petition was filled on should zoob I Mr. With That's study. Your Unitered adeliano Y. Orl

Charge By Mr. Witt Tien flad Thong deale twent to West.

Q Didn't you just testify that you knew!

A. I remember a petition being dismissed, but I don't remember anything about the date.

Q Now! what was that petition to be of / which ild. hade to four mechanical for comit about to

(Panse.)

The Court Organish Lat her ankalorit a A. I den't recall the date, myself not I the man of on To

Q. I didn't ask the date. I asked what the petition was. (Pause) here is the place was becoming a bedien

Mr. Kardy: If you know, Mrs. Roberts,

(Pauce.) Language County you mann! (Pauce.)

The Witness: I don't know what petition you are to ferring to. You have been referring to so many q over the

Mr. Witte I am talking about the petition which you aid you knew was dismissed on October 9, 1961; What was that petition!

A. You have been calling things petitions, and loke been agreeing that they were dismissed; you referred back to April of a petition, and it was no petition.

Q. Well, when-

A. And you referred to Joyce being put away in a petition.

[fol. 106] Q. Why don't you just tell me white his so w can straighten it out, why don't you tell us what the petition was! You said you knew it was dismissed on October 9th.

A. I don't remember what petition you are referring to.

Q. I am asking you what petition you were referring to?

A. I am referring to several petitions.

Q. Well, what are those several petitions? " to some is

Q. Will you tell as what you know a betsley tant I (iA) Q. I don't believe you have. Will you tell us what several petitions are you referring to? Assembly not judge I sult may Q. It was in tonnection with their pelitiens

(Pause.)

the discussion with the Probation Officer, is that The Court: Can you answer that, Mrs. Roberts . A.

The Witness: I don't know, actually. He has referred to petitions before, and he their unted that Joyce has petitions for this, and I signed petitions for that, and I don't know whether he is referring to the petitions that put her into Montrose, or whether that was dismissed, or just what petition he is referring to, duty of last investigation

The Court Do you know what the contents of the petitions were that were the subject of the date of October 9, 1961 fle the meetred elleghessen introon cranged fonder Holden

The Witness: I don't I honestly do not remember the date and just what petitions he is referring to us to that date.

The Court of Now Counsel saked you what you know about the other petitions that you do know about. Now if you understand it, you can tell him out of string me I O

that you gave on deposition in this case and ask if being ? The Court : Can you refer to let out the state beat week. that Joyce had throw with some tried to ken hereelt "There

of Paties of panel Hosep assented a gentiere asset theory a supply Acres

The Wilness: No. I honestly cannot. [fol. 107] The Court: All right; ask her another question.

A. And you referred to Joyce being sittly and a pe-

- Q. You say there are several petitions involved and one of them was the one on which Joyce was sent to Montrose here in Montgomery County Is a went may here no Y leave
 - A. At my request, resident tarty redimental faith I de
 - Q Now, can you tell us what the other petitions were!
- A. You referred to a petition back in April; that was supposed to be pending up until October. tadw. Hall O
 - Q. Will you tell us what you know about that petition!
- A. I discussed that a while ago, that I had a discussion with the Probation Officer. Lot passare for noveral another
- Q. It was in connection with that petition that you had the discussion with the Probation Officer, is that right!
 - A Yes sadd Warlf indi toward nov and : time of
 - Q. New did you know how that petition came to be flied?
- A. I had a discussion with the Probation Officer, but I didn't nign any petitions of the panels for and and
 - know who did! of garteler at he rether wond work into Montrose, or whether that the distance of
 - A No.
- Q. Now with respect to that case, the case about which you had a discussion with this Probation Officer-by the way, was that Probation Officer Miss Patterson't a such
 - A. It was.
- Q Now in connection with that case with reference to that case, will you tell us what you told Lt. Whalen about that case!
- A I don't remember telling Lieutenant Whalen anything chout that core word op now tank amortiser, radio and inode. Q. I am going to show you the transcript of testimony
- that you gave on deposition in this case and ask if it doesn't h your recollection with respect to what you told Deuteman Whalen Question: Die you tall Lie Whalen that Joyce had taken pills and tried to kill herself?" There

was an objection which was overraied, and you answered "Yea." of direct examination. The Court: Objection overroled. W. 18

A. I.

Mr. Kardy: For the record we are going to object for the record in this case, the improper use of the deposition [fol. 108] To further our objection that this, the deposition, should not have been permitted to have been taken in this case, for the record.

The Court Defection overraled; for the record

The Witness: I remember telling him that she took pills, but if you asked me the question about trying to kill herself, I don't know as if she tried to kill herself. I have Lieutenant Whaten and esked him tono idea.

a Ted llas i'nbib I

Mr. Wiff: Object to Mr. Kardy testifying Your Joner.

Q. When did you tell him that?

A. When did I tell thin that au of sere bA thill all

Q. Kentrovo benino) nomanini se secono spinio della A. I don't remember. I think it was before—that I came over here to ask for help; to get Joyce put away somewhere where she would not be harmed by the people that were coming past our house every night throwing bottles and fire crackers, breaking into the house, and breaking glass, breaking into and stealing things from pay house in

Mr. Witt: Your indulgence one moment, Your Honor, Off the record discussion between counsel for the defen-

ingsentember, October) 1961 is that not a fact ! Mr. Witt: We have no further questions, Your Honor. O heid as sematter of fact, the was placed in Montrose

ion in Cross examination of each side or butane evidestone of

due thought and instruction of distribunce, or any By Mr. Rardy: and toat a tent I'me pale guide

Q. Mrs. Roberts, as a result of your daughter being raped on July, 20, 1961, thereafter you and your family were a

Ma Witte Object Your Honor, that is beyond the scope of direct examination.

The Court: Objection overruled.

Mr. Witt: It's also entirely irrelevant.
The Court: Objection overruled. the theory in this ease. T (16) 109] The Witness: Yes, on red ture T [80] 101]

and a By M. Kardy of betwhered and trail for hunds

Q. You were subjected to much harassment from and

remember tel Q. As a result of that continued harassment at your home that you and your family were subjected to, you called Lieutenant Whalen and asked him to-

Mr. Witt: Object to Mr. Kardy testifying, Your Honor. Mr. Kardy: This is cross-examination: it's their witness. I didn't call her spectrost said and for noy biband & O ...

Mr. Witt: Adverse to us. Your Honor, I hab madel A.

The Court: Cross-examination, Counsel, overruled. O ... that don't demandent of thick townshiloor liber Feeble

onto By Mr. Mardy it to that a glad het oise out onto a revo

As a result of your family be subjected to much sment as a result of this rape that occurred on July 20, 1961, you called Lieutenant Whalen and asked for help. did you not most swant times thou your your bib

A I dd.

Q. And as a result of that Lieutenant Whalen arranged the hearing before Judge Noyes in Montgomery County in September, October, 1961, is that not a fact!

A That is right; say will not on wad you him to

Q. And as a matter of fact, she was placed in Montrose in protective custody; she was not committed there, or not put there, because of any emotional disturbance, or anything else, isn't that a fact?"

A. That is right.

Mrs. Roberts, as a cecult of gracial Me Corepin Objects She in in no position to know. Mr. Kardy i She answered it. Thank you. Your witness. Redirect examination our Homostill alk vil

By Mit Witt Doy star Jam . and about the

their of bettimines ted by 10% Q. Now Mrs. Roberts, were you present 1

The Court: Wait a moment now, just a moment. Counsel interposed an objection, I suppose, incorporating a motion to strike nativative Euro lastitution & Marylan

[fol. 110] Mr. Witt: No. Your Honor Honor Frob ! And

The Court: All right, You withdrew the objection, Mr. Forer

Mr. Forer: Yes, Your Honor. Witt pepers.)

By Mr. Witt:

Q. Now were you present at the hearing at which Joyce was committed to Montrose!

tification the leval file of that proceeding and say Aon

Q. And did you hear all of the discussions at that hear-Mr. Kardy: Just a minute, owe object. This chas dani

offered for identification take Court rated that thibit lack Q. And did you hear the discussion with respect to Joyce's mental condition at that time! 1110 1 111 11 11

Mr. Kardy: Object.

Mr. Forer: Your Honor-

Mr. Witt: Your Honor, he has opened the door; he discussed the reason why this girl was committed, and opened the door out than the again

Mr. Kardy: I just said the purpose of the hearing didn't go into the hearing.

The Court I think you have. Objection overruled.

The Witness: Repeat the question.

Mr. Witt: Would you read the question, Mr. Reporter

(Reporter reads from record) of the condition truckhad by

The Witness: There was no discussion of her mental condition, I don't believe us to not brown and ho

(Proceedings resumed in open court.)

The Court: Objection sustained.

with Exhibit not in evidence.

Mr. By Mr. Witt: Your Heanoithminiate theribati scope .

Q. When the Judge-were you present when the Judge ordered her committed to Montrose?

A. I was there when he said that she should go to some

Q. Do you recall that he specifically stipulated that her commitment was to be with permission to transfer her to any other State institution in Maryland?

A. I don't remember that up I will at the [fel 111] Mr. Witt: May we have Petitioners' 3 for identification? result of that continued baratoment a

(Clerk hands Mr. Witt papers.)

Mr By Mr. Witt: to Mr. Hardy trats

O. Now I show you from Petitiohers' Exhibit 3 for identification the legal file of that proceeding and show you where it states Joyce Boberts is and nov hib back

Mr. Kardy: Just a minute, we object. This has been offered for identification; the Court ruled that this is not-

The Court Objection sust fined soil nov his bank

Mr. Witt: Your Honor I can refresh her recollection with Exhibit not in evidence.

Mr. Kardy: Object.

Mr. Pores Vous Ronor The Court: Objection sustained. She didn't make it.

She has t seen it.

Mr. Witt: She has testified that she doesn't recall, Your Honor, and I am attempting to refresh her recollection of the Exhibit marked for identification of one Yubib

The Court: As to what she said or what Judge Noyes

Mr. Witt: As to what was said in her presence, Your Honor

The Court: Come up to the bench. Let me see the Ex-The Witness: There was no discussion of her metal

(Off the record bench conference.)

(Proceedings resumed in open court.)

The Court: Objection sustained.

The Court Put this on the record, he opened the door and put it in the record that is true; that is why I am permitting you to proceed with a broad scope, but you have got to do it in accordance with the rule of evidence. It's [fol. 112] not what I think or you think. If I had my way, just like counsel, I would repeal a lot of laws that I don't like, but we have got to abide by them. We are still a Government governed by rules, Gentlemen. Of course, Tam not telling you something you don't know, but let's not try to pull my leg. Go ahead. Strike "pull my leg," if you will, Mr. Reporter. Q Did I, as State's attorney or Mr. Cromwell, as Dep-

fort A By Mr. Witte tedansar fund to Penerott A state of the

Q. Mrs. Roberts, was there concern expressed at that hearing regarding Joyce's mental condition?

Mr. Kardy: Object. for bill year of L

The Court: Overruled.

The Court: Overrused.

The Witness: Yes, I believe so.

Mr. Witt: No further questions.

Mr. Kardy: No further questions, now I street out The Court: Before you leave, would you come up to the beach a moment? om I think ves had botten come up and

(Off the record bench conference.)

(Proceedings resumed in open court.) broser out 11(0)

Mr. Kardy: I will ask one question, Your Honor, I forgot to ask and sense of the west to excuse her I

Recross examination.

Att. Herey . Your blonot, before an an very de Roberts, as far as no are down withing also do day. Q. Mrs. Roberts, in your presence and the presence of your daughter, did any Montgomery County Police Officer tell her how to testify in her trial, either Montgomery County or Anne Arundel County! jagw. no Lating Disting

Miss Robertal

The County You may be exe

A. Not in my presence wor you want rebrail all

Q. Did any State's Attorney; did L as State's Attorney, or Mr. Cromwell, or anybody in the State's Atterney's office in your presence and the presence of your daughter tell your danghter how to testify in either trial in Anne Arundel or Montgomery County Prov to Maid: I take ton 1211 lol

A Not that I know of

[fol. 113] Q. Did any Montgomery County Police Officer involved in this case, or any other officer, tell your daughter in your presence, or tell you, to tell your daughter to lie in either trially you know strike "not not you wer ling at Mr. Reporter.

A. Of course not.

Q. Did I, as State's attorney, or Mr. Cromwell, as Deputy State's Attorney, or any member of the State's Attorbey's office of Montgomery County tell you or your daughter in your presence how she should testify and whether she should lie or color the facts!

A. No, they did not

Mr. Kardy: No further questions.

Mr. Kardy: No further questions.

The Court: I would like to ask one question. It's not within the scope of your direct and your cross-examination, but I think you had better come up and see what you think the record bench conference.) about it.

(Off the record bench conference) muser agminesort)

(Proceedings resumed in open court.)

The Court: All right, you want to excuse her?

Mr. Kardy: No further questions

The Court: You may be excused.

Mr. Forer: Your Honor, before you go, Mrs. Roberts, as far as we are concerned we are now willing also to excase Miss Joyce Roberts if the State is willing to excuse her; I thought Mrs. Roberts would like to know that now. tell her how to testify in her trial, odil : wing : wing

The Court: You want to excuse or you want to call Miss Bebertat resumed in open court.

The Court of Objection suctained,

Mr. Kardy Fon might keep your danghter bere for haming-conference they're of training in meneral psychiae a edition bear the selection to be selected in the bear work in the

[fol. 114] Da. FREDERIC SOLORON, was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows: ad and Fellow of the Department of Perchiatry of Children's

Hospital of the District of a olemonare berichiater.

101 affitt By Me Witters 1 golgansov

Q. Will you state your name, please?

A. Dr. Frederic Solomon,

Q. What is your address, Dr. Solomon!

A. Howard University College of Medicine, 520 W. Street, N.W., Washington, D.C.

Q. What is your occupations stood and it a certain and

A. I am a faculty member in the Department of Paychiatry of the Medical School. I am a psychiatrist, child and adolescent psychiatry, specifically to sathe esociation Q. Do you specialize to the back stidiate to the

two summer industrial and the want in the summer own

Qirwhat find position to design and an individual of

A. Child and adolescent psychiatry.

Q. Now, Doctor, will you tell the Court what experience and training in this field you have, starting with your graduation from College!

A. I attended the University of Chicago Medical School from 1954 to 1958. I had some training in the field of child psychiatry before graduation from Medical School. There was also training included in my internship in the University of Illinois, research and educational, hospitals.

On completion of internship, I came to the National Institutes of Mental Health, National Institution of Health, in Bethesda, Maryland, where I was assigned to work with adolescents and teenagers and college students, both disturbed and normal, from a research point of view and from a clinical point of view. I spent two years at N.I.H. and

then spent the next two years at Johns Hopkins Hospital, having one year there of training in general psychiatry, which included adult and adolescent work, and work in theo Emergency Room, and having one year of full specialisation to cold and adolescent psychiatry.

in child and adolescent psychiatry.

[fol. 115] During the past year I have been an Affiliate
Fellow of the Department of Psychiatry of Children's
Hospital of the District of Columbia in child psychiatry.

I have received further training in the child analysis program of the Washington Psychoanalytic Institute for one year. I have served as a medical officer in the District of Columbia as a consultant to their Mental Retardation Clinic and to their Crippled Children and Handicapped Children Unit at D. C. General Hospital

Mr. Forer: If the Court please, I now offer in evidence an Exhibit which was identified in the deposition of Mrs. Whiteleather, which deposition is on file in the jacket that Your Honor has of this case, and it was identified there as Plaintiff's Exhibits Nos. 4 and 4-A, because there are two pages for identification. It was identified by Mrs. Whiteleather as an official Admitting Record of the Prince Georges General Hospital, relating to Joyce Roberts. I offer it in evidence.

The Court: You stipulate that the Custodian brought it here; it's the authentic record? via I self to 1561 mort born Rardy: Yes. minimal most bid 1. self to 1561 mort by I self to 1561 more percentage.

The Court: Objection overruled alt will be admitted in evidence and a second beautiful and

in deduced in by isoso by any down thinks a serious to with the independent the serious of the independent the serious to with the adolescents and to the serious to the serious to the serious to the serious point in the serious to the serious and normal, from a research point in which thinks at the said a serious to the serious to the

The Court of think he is qualified. The doctor will be qualified as a doctor of medicine with a specialty of perchintry to give opinion. Keep in mind he can give opinion in relation to mental disability; it only goes to wait, whether he is a specialist of psychiatry or not, as I understand the law, and out to make a make a specialist of psychiatry or not.

Domar would ven have an on [fol. 116] Q. Doctor, I would like you to assume that a sixteen year old girl attempted suicide by taking an intentional overdose of pills, that she was taken to and held in the psychiatric ward of a hospital, that she stated that .ahe didn't want to live, and the general practitioner who saw her at that time concluded that she needed psychiatric helps I want you to assume further that some three and a , half months later such a girl were to testify about an event in which she and a boyfriend were parked in a car at night on a lonely country road, three strangers came to the car and got into a light with her boyfriend, she ran into the woods and had intercourse with some of the strangers. I want you to assume further that there is a dispute in the testimony as to whether she suggested such intercourse or if was forced upon her. I want you to assume further that the event about which she was testifying took place approximately one month prior prior to her suicide attempt. Would you be able, on the basis of those assumptions, to form an opinion about her probable mental condition and its effect upon how much credence should be placed on her testimony regarding such an event, on the basis of those to a suicide attempt, some of them can be lemporary

as the decunrement that may followethe sadden for a The The Security Harris parent, and the person may express Trans. The the person may express Trans.

Q. Doctor, will you briefly state your opinion with relapest to her mental condition at the time of the suicide attempt to be made and transfer obtains off of norther of

attency suicide, and may recever fainty, promptly quee

phrenic inocess which is, of course, a most serious meetals illness, there are other possibilities which are also, to my

The Witness: I would say she was mentally ill, and more likely than not, suffering from a serious mental illness over a said bain at essel point of winds

Ethnorisate entopoley land of a virtifiable do de literal of a mois element

Q. Will you state the basis of that opinion

A. Are we talking about at the time of the suicide attempt?

Q. Right.

A. Basis for that opinion is taken from my own experience, from teachings of leading authorities in the field, and by the one research report that hears directly on this question. Suicide in a teenager in the United States is [fol. 117] considered as such—an attempted suicide is considered as such—an attempted suicide is considered as such evidence of psychopathology; that is, some mental illness. The pature of this given case, whether the mental illness would be of a more serious or less serious sort, cannot be fully ascertained, of course, from the available facts, however, the probabilities are as follows:

There is one research report that pertains directly to the question of the underlying disorder in suicide attempts; it is now recognized that suicide attempts are a symptom of underlying mental disorders in youngsters, which must precede and follow the attempt. It was found in a series of patients of teenagers coming to the attention of psychiatrists for suicide attempts that Cornell University Medical Center in New York in 1959, that 62% of such patients were achizophrenic.

There are, of course, other conditions which can lead up to a suicide attempt, some of them can be temporary, such as the derangement that may follow the sudden loss of a parent, and the person may express wishes to die, may attempt suicide, and may recover fairly promptly once the immediate grief period is over These, I believe, are the more rare cases.

In addition to the suicide attempt being part of a schizophrenic process which is, of course, a most serious mental
illness, there are other possibilities which are also, to my

way of thinking, quite serious. There is the several personality disorders; there are the pure depression, primarily these two categories, in addition to the sphinophronis category on the boundary of the sphinophronis

The Court: I think you had better ask him another

Mr. Witt: Doctor, would you have an opinion as to the likelihood of the persistence of such a condition for a period of three-and-a-half months following such a suicide attempt?

Mr. Kardy: Object. P. add work shisting timmnon of boist

The Court: Sustained 100 Lavin and blue of the remain

[fol. 118] . By Mr. Witt A the bestitest administrator on no

Q. Doctor, assume that such a snicide attempt occurred on the night of August 26, 1961, and that the sixteen year old girl who made such an attempt were to testify in a criminal proceeding on December 5, 1961, do you have an opinion as to her mental condition at the time of her testimony?

his suswer. Your Henor.

Mr. Kardy: Object.

Mr. Witt: On December 5, 1961 vald : seentil will

Mr. Kardy: Excuse me. Object.

The Court: Objection overruled. I will permit him to answer yes or no.

the By Mr. Witt ablied now view beholded with the big

Q. What is that opinion?

"Mr. Kardy: Object to unote but the short of being I take

The Court: I will overrule it to a salahi a now eye deed

The Witness: I would say there is a substantial risk that she would still be mentally in three and a half months later on the basis only of the information you have given me.

- mortson reason reasons as A amode manual providence.

Mr. Kardy: Object as not being the test and move the answer be stricken from the record—using the word "submarily these two categories, in additionalfalloads in laiteats

The Court: I don't think he answered your question; I

will move it out of the record. Grant the motion.

Mr. Witt: On the ground that he didn't answer the

question! The question, as I recall, was

The Court: Doctor, you answered the preceding ques tion merely that this sixteen year old person, first referred to by the original question, had a mental illness when she tried to commit suicide. Now the question is, if you can answer it, would you give your opinion as to whether or [fol. 119] not she had a mental illness three months later, of so, when she testified at a trialf

The Witness: Well, Your Honor-

The Court: You can answer that yes or no. of of on the night of August 26, 1901, and that the sixteen old girl who made such an attenual were to telegram

The Witness: I would have to answer no. 2074 facilities.

The Court: All Hight dender larment reduced an abintique

Mr. Witt: I think he ought to be permitted to explain his answer, Your Honor. The Witness: May If
The Court: Yes, go shead.
The Witness: L
The Court: Yes, you may explain.
The Witness: Thank you.

The Court: You answered you didn't know. I think it's perfectly obvious why you wouldn't know, I realize what the doctor is up against. Go ahead.

The Witness: Thank you. In the current circumstances what I must do is look at the group of patients who in their

cen age years make a suicide attempt will think our

The Court: Wall, unfortunately then he can't answer of Question; this particular individual marked in this hypothetical question is not one of a group, a breathing, living human being. Ask another question.

By Mr. Witt: A same on tribught at Mary Report to

Q. Do you have an opinion Doctor, as to the likelihood of the permistence of that mental illness at the time of the testimony i sice in sew noisemp healtantanyd [IVI 161]

phrente or otherwise psychotte. Mr. Kardy: Object. [tol. 120] Mr. Witt: Your Honor, we are not forced to deal here with—
The Court: Objection sustained.

friedli By Mr. witte notation as avig nor blook tod O Q. Doctor, do you have an opinion about how the mental illness, which you have described, would affect the credibility of a witness about the kind of circumstances which I described, that is, an intensively personal situation in which personal motivations were involved?

Mr. Kardy: Object. noiteelde adt cistand : rue) adT

The Court: You can enswer it merely yes or no.

The Witness: Yes.

The Count: Sustained. Mr. Witte What is that opinion lastr soul facto's all

Mr. Kardy to Object at or orbe and impulse obligits add lo

The Court: Sustained.

Mr. Witt: Your Honor, I offer to prove that his opinion would be that the mental illness which he has described would substantially affect the credibility of such a person about such an incident.

The Court: Well I never heard of such a rule. I sustained the objection. It's up to a jury to determine the credibility. How can we take and let a man, after a trial has occurred, come in and say the credibility was no good! Mr. Witte That is exactly the point, Your Honor,

The Court Just right and I don't follow you. Objection sustained.

Mr. Witt: Very well, Your Honor, No further questions. That is portable

d will you have any interestion or had you proclosely had injerigation that on the night of the alleged rajer. o . Mr. ByrMr. Forer: as not being thelist all wife in

Q I believe you answered His Honor in questioning that you could not say whether or not this girl in this [fol. 121] hypothetical question was or was not schizophrenic or otherwise psychotic.

A. On the basis of the information given me, that is

right.

Q. Yes, and you never examined this hypothetical girl?

A. That is correct.

Q. But could you give an opinion as to the likelihood of her being psychotic?

A. Yes, I thought I gave that opinion. of intel C.

Q. And is that likelihood strong or weak for

Mr. Kardy: I object who with a color bedrast i. described, that is, an whomstell bedrast is.

The Witness: Strong.

Mr. Kardy: —and move it be stricken from the record.

The Court: Sustain the objection. beid of the X all

Mr. Kardy: And move it be stricken from the record.

The Court: Sustained.

Mr. Forer: Does that opinion apply not merely to date of the spicide attempt, but also to the date of the of her The Court: Sustained. testimony ! name Name !

Mr. Kandyst Object Venr Honor toll 180Y : Hill . 116

The Courts Yes, the objection is sustained, Mr. Forer. would substantially affect the orbdibility of such a person

Q. In your opinion would this suicide attempt by this teen age girl in itself call for a psychiatric examination!

credibioity. How can we take and less man after a trial

The Witness r Certainly at yes bas at emos berrages and

Mr. Forers Your Honor, the next witness we will call, we will call as an adverse witness. We call Mr. Kardy.

The Charl: Well; unfortunately then La bonistage god Mr. With Verk well, hour Honor, No further disashypothetical question is not Sas of a group, a breathern

fiving common being: Ask amether Arestons

[fol. 122] Linewann T. Kanny, was called to the stand as s witness and having first been duly sworn was examined and testified as follows: hand raid, within the real

the finatany setuping to the way Direct examination during the land and all all the

Mr. Cromwell: I assume there is no objection, Your Honor, because Mr. Kardy has been present in Court during the proceedings, I am sure there is no objection on their part. He can testify but I want the record to be clear on that question.

Mr. Forer: I think the record is clear that Mr. Kardy has been here. I but I state would the to the only

Mr. Kardy: I think so. " the devertie Cartifold pal

The Court: Let's take a ten minute recess now, and let's get our blood pressure down. and one to mentanting expenses

The Court: Mr. Forer, let me pick 70d

o Page 1621

(Recess.)

(Witness resumes the stand.)

By Mr. Forer:

Q. You are Leonard T. Kardy, State's Attorney for Montgomery County, Maryland, are you not? 1991

A. That is correct, Mr. Forer.

Q. Mr. Kardy, how long have you held that office!

A. I have been State's Attorney for Montgomery County approximately six years, and prior thereto I served four years as Deputy State's Attorney, that we bediese out we

Q. And Mr. Kardy, you, as State's Attorney, and assisted by Mr. Cromwell, your Deputy, prosecuted for the State in the trial of John Giles and James Giles on the charge of raping Jeyce Roberts, did you not?

A. That is correct, Mr. Forer.

Q. Mr. Kardy, at the time of the trial which you will recall, I believe, December 4 and 5, 1961;

A That is correct; secult belies well no Q. Did you have any information or had you previously had information that on the night of the alleged rape,

[fol. 123] at the time of the alleged rape, namely July 20, 1961, there was pending in the Juvenile Court of Prince Georges County, Maryland, a charge that Joyce Roberts was out of parental control?

A. To the best of my knowledge, I did not know that

at the time of the trial of December 4 and 5, 1961.

Q. Did you at the time of the trial know, or have information, that in a proceedings in the Juvenile Court of Prince Georges County there was pending on July 20, 1961, a recommendation that Joyce Roberts be put on pro-

A To the best of my knowledge I did not know those

. facts, sir.

Q. Mr. Kardy, the Petitioners' Exhibit No. 1, which is the transcript of the trial, shows at page 153, that in your cross examination of John Giles-

The Court: Mr. Forer, let me pick you up here. Is this .(Witness resumes the stand. the transcript?

By Mr. Perersons on

The Clerk: Yes.

Mr. Cromwell: Page 1531

Mr. Forer: Yes. While T busnoud Strange C. D.

(Paper shown to Mr. Kardy by Mr. Forer.) anoghold. A. That is correct. Ma Ferday their the that H. M.

The By Mr. Porer: ohe west and west which all of

Q. The record shows, Mr. Kardy, that you asked John Giles on cross examination the following question after he had testified something about probation, Question: "So you were on probation, and she was on probation, and so you just sat flown and talked!" Answer: "Yes." Question. What did you talk about, when you two probationers sat down!" You see those two questions? A Yes, sir, that is correct of the toorion and the

Q. Mr. Kardy, at ranoitsoup own sashing bit wow . Oll

recall, I believe, December anotherp eson has bib I.A.

Q. Would you have asked those two questions if you had known that on July 20, 1961, there was pending in the oque begolf and to tage out no tast not annual bad

Juvenile Court of Prince Georges County, Maryland a [fol 124] charge that Joyce Roberts was out of parental control and that probation had been resommended for herf

A. Mr. Forer, I believe the basis of those questions was the defense's allegations and the police report. We also had that. Both John and James Giles stated that Joyce Roberts said to them that she was on probation a distant

Q. Well, I am unclear; your answer to my question is "yes," or is it, "no" to laistends of tou lith buy estimations

A. Lelieve I have answered the question I fach I .A.

Q. I asked you if you would have asked those same questions if you had the information which I think is now being brought out concerning this Juvenile Court charge in Prince Georges County, the fact that probation, a recommendation for probation, was pending? done to man below

A. I don't know; that would be speculation, Mr. Forer, a. I don't know, and the reason that grown room I do

was because it was raised on defense; thous Yook I A d

b Q: Your answer Lower 1 . 154 prossibers on soitsoon edit

deA.s.I don't know, and no has death drightery and believe mone by Q. All right. In the same transcript, page 86 of the trial record, and this is in your redirect examination of Joyce Boberts on cross-examination of love livestaged .

the Giles brothers in the woods

Mr. Cromwell: Page 861

Mr. Forer: Eighty-six.

has been testinguno bistoid asid (Paper shown to witness by Mr. Forer) something on squestioning of Mri. President concerning than

By Mr. Forer:

ns to Mantrose; and Braginegolleg Q. It is correct, is it not, that on redirect examination of Joyce Roberts at this trial, or at the trial, y asked the following question, and she gave the following answer, Question: "Were you on probation at the time these two boys raped you!" Answer: "No, sir." Did you ask that question on redirect and did Joyce Roberts give you that Q. Did the police report that you can amount for

police repute prior to trial of sources of garages (A.

Juvenile Court of Prince Georges County Mason A

Q. My question now in this III at the time you naked that question and at the time Joyce Roberts gave the answer [No. Sir." if you had known that on July 20, 1961, there was pending in Juvenile Court pharges in Prince [fol 125] Georges County and that probation—a recommendation of probation was pending against Joyce Roberts, would you have brought that out in your further questioning as you did not at the trial?

'A. I don't know; that would be speculation a Litertified to the best of my knowledge Lidd not know that there was a recommendation of probation by a Prince George. Probation Officer, elineval, sidt maintenant up the dord miss.

Q. And your enswer now is that you do not know whether or not, if you had such knowledge, it would have made any difference to you have tall would have

A. I don't know, and the reason the question was asked was because it was raised on defense; that is why I asked the question on redirect. Mr. Prescott, who represented James and John, brought that out in his cross-examination of Joyce Boberts and that is why I asked the question on redirect, because of his cross-examination of Joyce Roberts.

Q. Because on cross-examination of Joyce Boberts had had asked her whether it was not a fact that she had told the Giles brothers in the woods that she was on probation?

A. That is correct.

Q. Yes, air. Now, Mr. Kardy, I believe you brought out something on questioning of Mr. Prescott concerning the police report?

The Court: Concerning what, Mr. Porert 100 at 11.0

Mr. Furer: Police report that you had showed Mr. Prest, cott, the police report: Transcent bank doitsoup gusuelle)

question on redirect and did dove leaver 12 and all .

Q. Did the police report that you saw you saw the police report prior to trial, of courses

andin Xos, and an analog of the entering the county hands of Q. Did the police report that you same state in there that the defendants had made to statement to the police that Joyce Roberts had that night in the weeds said to them that she was on probation to institute was four tand

detectives in the case, I believe they stated that; and I am sure that is in there, Mr. Horer, and if it is in there Mr. [fol. 126] Prescott saw it, because I let him have the whole constantly in Prince Georges County by people combroder

Q. Yes, now you knew Joyce Roberts was residing in, a resident of Prince Georges County 1 2 1814 [head [12] . John

A. Yes, I knew she was a resident of Prince Georges County as sum at ladd included such all Witness wild and W

Q. Did you make any attempt to find out whether or not in fact, Joyce Roberts was on probation in Prince Georges County on July 20, 19611 com northware mountains assistant of Arial not a spirit of and and and added to a south of the Land

Q. Did you direct any of the policemen or any of your deputies or assistants to ascertain whether or not she was on probation is fruit a monst consume assend they while Quite .

A. To the best of my knowledge shopes a sait sait noit

the Most comery County Juvenile, C. 11601, Oct vianos took and A. To the best of my knowledge, information and belief I did not. ril as well as all sent that she was a titt ostar

Q. Now Mr. Kardy, there has been testimony here which, of course, you have heard that a proceeding was instituted in Montgomery County Juvenile Court which resulted in Joyce Roberts being sent to Montrose; and bolieve you also heard testimony by Lieutenant Whalen hat he was instrumental in the instituting of this proceeding!

A. That is correct in abatana avitantor ai bonniq saw Q. Were you consulted about this proceeding in the Montgamery County Juvenile Court before it was finstitated the of the trial of the guillion buy the deal maintage "A Post I vancous first and the last an odd a world [19]

b Q. Who consulted you to a character and the desired and and

A. Lieutenant Whalen consulted me, Mr. Forer.

Q. Yes; now, did Lieutenant Whalen, when consulting you about this matter, give you any information that Joyce Roberts had some mental problems?

A None whatsdever, Mr. Forer The conversation as I best recall now, almost three years ago, Lieutenant Whaten called me and informed me that Mrs. Roberts had told him that Joyce Roberts, the State's witness and Prosecutrix in the then alleged rape case against James and John Giles and Joseph Johnson, that she was being harassed constantly in Prince Georges County by people coming by in cars honking, throwing bottles, knocking on the door. [fol. 127] and Mrs. Roberts, as I understood it, contacted Lieutenant Whalen and asked for protective custody. When Lieutenant Whalen brought that to my attention, Dauggested that he see Judge Noves about it, and that she be placed in protective custody. There was no discussion whatsoever as to her mental condition, or anything of that nature, only the fact of protecting a State's witness who was being harassed as a result of the alleged rape of July 20, 1961, apprentative initations at all answers an acutary of

Q. Didn't you become aware soon after that conversation that the proceeding which was actually instituted in the Montgomery County Juvenile Court alleged that Joyce Roberts was a juvenile delinquent and out of parental control as well as alleging that she was a necessary witness for the State of manufact need and event, when I wow.

A. I don't believe that to be correct, Mr. Forer. I did not see the Juvenile Court records until you produced them here. As I told you in my prior question, Lieutenant Whalen posed the problem to me of protecting a State's witness and I told him to see Judge Nove to see that she was placed in protective custody until such time as we would need herefor trial mode besteases.

Qu You didn't knew what happened thereafter in contraction with this proceeding?

A. I know thereafter she was placed, I believe, in Montrose School, just for the purpose of being protected

as a State's witness, that she would be available for trial any time thereafter, visioning addition to satisfied besity

Q. Well, Mr. Kardy, I think you may have misspoke yourself. It's a fact that you know now that she was cent to Montrose School for reasons in addition to her being wanted to be held in protective custody as a State's witness?

A. I saw the proffered Exhibit that you have proffered for identification purposes only, and my interpretation of those Exhibits which are not in evidence, differ from yours, Mr. Forer, saw strength as to le had no

Q. Yes. I am just trying to find out the extent of our differences, if you would favor me with a reply.

A. They are not in evidence. I state again that we differ in our opinion as to why she was placed in Montrose.

In my opinion she was placed there in protective custody.

[fol. 128] Q. And for no other reason?

A. And for no other reason. That was the purpose of our instituting the proceeding in Prince Georges County.

Q. Is that also your interpretation

A. In Montgomery County, I am sorry.

Q. Is that also your interpretation of the findings, an order commitment made by Judge Noyes!

Mr. Cronwell: Your Honor, I object to it. I think he has answered the question and those documents are not in evidence.

The Court: Well, I feel it's argumentative, I would sustain the objection.

Mr. Forer: Beg pardon!

The Court: I think it's too argumentative, Mr. Forer; Lowill sustain it remarks that she that begal a had abadoll ngen on oir about August 25, 1961, quat before this suitede

By Mr. Forer:

Q. Mr. Kardy, did you have information on or before the date of the trial of the Giles brothers that Joyce Roberts had attempted suicide late in August of 1961? A. To the best of my information, knowledge, and belief, Mr. Forer, prior to December 4 and 5, 1961, the actual

pitalized because of taking excessive drugs. I did not have any knowledge of any suicide at all 1 and 10 W

ossive drugs hot libba his angular for lands and high of

A. I believe it was Lieutenant Whalen believe or believe

drugs was intentional and not accidental formational and

A. No, he did not realize all four was now we not did! seed

Q. He just told you that Joyce Roberts was in the hos-

A. That is the information he related to me.

Q. Didn't he tell you what hospital she was atf

A. I don't know is the same one order an an actions mother

[fol. 129] Q. Did he tell you that she was in a psychiatric ward!

A. He did not mys and I' thousand route on not hank W.

Q. Did you ask him whether this overdose was intentional, or unintentional?

A. In Montgomery County, I am going, .ton bibl .A.

Q. When did you get this information; was it soon after the suicide attempt—excuse me, was it soon after the overdose of drugs!

A. Tassume it was.

Q. And you made no inquiry or attempt to find out what caused this overdose of drugs!

A No. I did not. I guess I just assumed that she did this because of the case that was pending in Montgomery

County. I didn't make any investigation.

Q. Well, didn't you also know at the time that Joyce Roberts had alleged that she had been raped by two other men on or about August 25, 1961, just before this suicide attempt?

A. I knew that some time prior to trial there was a case in Prince Georges County which had no merit in that she didn't make a rape charge; it was investigated, and there was no rape.

het, Mr. Forer, prior to Decomber 4 and 5, 1961, the actual

Q. You did know prior to trial that there had been investigation in Prince Georges County of an alleged rape of Joyce Roberts and that that charge had no merit or that was the conclusion, is that accurate to that i consecutionismos

A. As I stated in my prior question, as Dibest recall sometime prior to trial— and a state of () : (fewerick) all

. Q. Yes, hope I recoved necessarily dept. I resembly dept. A. ... that being December 4, it came to my attention, and I assume it came to my attention from Lieutenant Whalen or some Montgomery County Police Officer, because I had no conversation with any Prince Georges County Police Officer that there was this investigation in Prince Georges County.

Q. Would you say to the best of your recollection that this information came to you from Lieutenant Whalen!

A. I would say so; that would be a fair statement.

Q. Did you ask Lieutenant Whalen or anyone else on the police force or any of your assistants to look into the details of this?

A. I believe, Mr. Forer, it was brought to my attention [fol. 130] that there was no charge pending; there was nothing; there was an investigation, and there were no charges placed

Q. Now, at the time of the trial, or before the time of the trial did anyone bring to you say information to the effect that Joyce Roberts was mentally or emotionally disturbed!

A. None whatsoever.

Q. Now, at the time of the trial had anyone told you or branght to you information to the effect that Joyce Roberts was sexually promiscuous? to doised sed out at asw. do The Court: Head that question:

THE RESERVEY YES. SI

Mr. Cromwell: I object. The Court: Sustained. (Reporter reads from the record.)

Sala By Mr. Forer: changlar France To Nomine J. Harris

Q. Af or before the time of the trial did you have any information with regard to the fact that Joyce Hoberts! reputation for chastity or unchastity? Ar. Forer: That is rig

Mr. Cromwell: I will object.

or The Court: Objection overruled sing worst his woll to making Power: That wasn't my question, Mr. Kardy, My question was; Had you received any information relative to her reputation for electity or unchastity at a L A Mr. Cromwell: Object when the roll of rolling emitted on ne Phil Court : Objection overruleds you of some it sunpage ! follow Witness: A proceived no information as to her reputation as to chastity road early keying this morassession on Officer that there was the investigation in the County County of the Cou . Had you received any information as to whether or not the was charted [fol. 131] Mr. Grouwell: Object to that question of O The Court Diestion sustained may to vita to soro sorlog A. I believe, Mr. Porer, it was brokened it Allendon Quilled you sereived any information as to Joyce Boberta' ereddbility and reliability! Mr. Organicall; As to what! I didn't hear all to work O Mr. Chamwell: Object to the question. The Court please, this is all going to the on the theory of newly discovered Perer: No it is not. It's a question of what inforssession of the Prosecutor, IBLE TO BE untrop was in the po The Court! Read that question. ReThe Reporters Yes, air she had droude to the world alker (Reporter reads from the record.) Mr. Oromwell: I may have misunderstood. Is he asking he crees so information on had an equation? Is the serviced information about her reliability, in Mr. Forer: That is right. That is all I asked.

And the proper is the state of the

The Court so As I understand, that he what he haded Object to it; I don't know what difference the inless - wastaines var forone - grant dans derest Les Mr. Cromwall will withdraw my objection to the que tion, but stand then corrested that testiments and meit three, and then wrows a war now, their like courts of the on The Witnesse: I received no information as to her great that both James Giles, John Glins, and Joseph Joylind did penetrate her and did rape her.

vanismBy Mr. Forer on argung a vailed I rband at

Q. Did you at any time, Mr. Kardy, direct any investigation of the directed toward ascertaining the character information or credibility of Joyce Roberts!

A. I did not.

[fol. 132] Q. Did you have any information that any such investigation had been made by the police!

A. Te my knowledge, it had not

Q. Did you at any time direct any such investigation with regard to Stewart Foster A. That is correct.

A. I did not

Q. Was such an investigation to your knowledge made by the police f

A. To my knowledge it was not, Mr. Forer. a raved I area

- Q. Did you make any attempt to ascertain whether Stewart Toster had a criminal record
- A. I believe I did after the Giles case: I don't think in the Giles case I did
- Q. Well, I am really thinking about at or prior to the trial of the Giles case! O. Now, do you recall that in your

A. No. Talant

- Q. Now, of course, you were not present when Joyce Boberts testined at the preliminary hearing?

 A. Twas not.
- Q. However, it's a fact, is it not, that Joyce Roberts prior to the trial told you that at the preliminary hearing the had testified that she had been raped by only two men?

 A. No, that is not a fact.

 Q. It's not a fact.

 A. It is not a fact.

Q. Well, had someone told you that prior to the trial? A. No. My understanding of the preliminary hearing as I say, I wasn't there-one of my assistants was, and I believe it was Mi. Cromwell, that she testified that only two raped her and then corrected that testimony and said three, and then when I interrogated her or questioned her in my office prior to trial, she told me at that time that both James Giles, John Giles, and Joseph Johnson did penetrate her and did rape her.

Q. Mr. Kardy, I believe you were present at the elemency

bearing before the Governor! Is smit van is nov bid .Q

A. I was, sir,

Q. And it's a fact, is it not, that at that hearing the Governor asked you for a statement of your position?

A. He did. sir. [fol. 133] Q. And am I correct that at that time you told the Governor that you, the State's Attorney, did not oppose any action of elemency which the Governor might choose to take t . regard to Stewart Foster?

A. That is correct.

Q. If I misstated, I would like you to correct it.

A. Yes, I told him, as I stated in my opening statement here, I never asked for the death penalty. I didn't in this case, and when I appeared before Governor Tawes I said it was in his hands. I had no statement to make at that time.

Q. In fact, you made it perfectly clear you didn't oppose

any clemency L

A. I left it in the Governor's hands.

Q. Now, do you recall that in your summation to the jury in the Giles trial, which I can't show you because it's not reported, do you recall telling the jury that this case was one of the most vicious cases you had ever prosecuted?

alle Peret: Preliminary question and best large and or

Mr. Crumwells: Still object to it, had substituted by the Court: I don't see any harm in that question, overrelaitpear That is tight. That is all togla ton all . O A. It is not a fact.

The Witness: It has been a long time ago. Mr. Forer to the best of my knowledge I think I represented to the jury that it was a very serious rape ease; I don't know whether I used the term "vicious." In my opinion, then, as now, I think it's a serious case. Last that the will A

parsonally as Prosecuting, Attorney and have the Governor By Mr. Forer:

Q. Mr. Kardy, we are both lawyers?

A. Yes.

Q. We both share the common feeling that we do not like a witness to run away from him. We would like right-

Mr. Cromwell: Is this a pending question or orstory The Court: Let's ask the question stigso at vino to X. A.

tailw or mission through thouses to electronical the appear [fol. 184] By Mr. Forer: na ai tuo tlash od bloods taem .

Q. Isn't it a fact, Mr. Kardy, that you did refer in your summation to the case as a vicious case?

A. I don't know; Tmay have.

o A Q. You may have talk se subdata thou ther it al

Mul may have shift suggested was selfande emos

Q. If you knew then what you know now, would you have told the jary it was a vicious case?

Mr. Cromwell: I have to object for the record, Your Honor, that is It had they're been

The Court: I think that is argumentative of A so the good

Mr. Cromwell: __a fact for the jury to decide.

The Court: I will sustain that objection to that type of question.

Mr. Forer: You may cross-examine.

Cross examination.

By Mr. Cromwell:

Q. Mr. Kardy, in connection with the elemency hearing about which you were asked some questions, when you visited, or when the Governor called upon you to make any statement and you indicated, the response which you gave,

with intention to rape, or were all held on rape?

did you make a statement that you did not oppose elemency crause you felt the case, from the investigation which had been conducted was no longer a capital case, a serious white faither the distribution of the air and and the said the

A. No, it wasn't that. I just wanted to appear there personally as Prosecuting Attorney and have the Governor knew my feeling that it was in his hands and for him to

make the decision.

Q. Point of fact, Mr. Kardy, since you have been the State's Attorney have you ever made to the Court in a capital case any recommendation in connection with the imposition or non-imposition of the death penalty or life imprisonment situation and and a side at all ammortisment.

A. Not only in capital cases. I never made it in any other cases. It's up to Their Honors to determine what punish-

ment should be dealt out in any case.

[fol. 135] Q. Is that what you advised the Governor when you were there! we top do spulled a me sensual objict to manual

A. That is what I advised the Governor, word from I .. A

Q. Is it your understanding, as State's Attorney, that in some counties in Maryland, recommendations are made by the State's Attorney to the Court in criminal cases?

A. I think in most counties the State's Attorney makes

those recommendations.

Q. It's not the case in this county!

A. It has never been the case in this county while I have

been State's Attorney and never will.

Q. Now, Mr. Kardy, in connection with the question asked concerning the preliminary hearing, would it refresh your recollection if I told you that I was present-

A. I believe you were almax - says and not a

O .- at the preliminary-hearing! And following the preliminary hearing all three of the the preliminary hearing was held before Judge Gordon in Silver Spring, is that-

A. I believe that is correct.

Q. And did Judge Gordon—all three of the defendants, both the Giles brothers and Johnson, on the charge of rape? ratied, or when the Governor called upon you bibeH .A.

Q. Did he hold any one of them on a charge of assault with intention to rape, or were all held on rape!

A. They were all held on a rape charge on a leaded him.

Q. Was it your understanding from what transpired at the preliminary hearing that Joyce Roberts, the victim thought that in order to constitute the offense of rape there had to be an emission by a person!

Mr. Forer: I object Your Honor: Was it his understanding from what happened at the preliminary hearing that he did not attend. Stewart Foster!

The Court: I think you opened it up on that direct. I will overrule it. I will permit that telerit alod of rolf ?

The Witness: That is correct.

the statement which they [fol. 136] me By Mr. Cromwell:

Q. And that is what was the confusion that was inquired about by Mr. Forer! that nov bill bird vis the

A. That is correct.

Stewart Poster or any Mr. Forer: Object. The question is wrong form I didn't inquire about any confusion, and if so, whose confusion.

Mr. Cromwell: Mr. Forer's.

The Court: Wait a minute. will to the of low seasont w

Mr. Forer: How can he answer about my confusion? Then the question is doubly objectionable.

The Court: Read the last question.

The Reporter: Yes, sir, and now bill send to be vitted vitted?

(Reporter reads from the record.)

specifically, asked f Mr. Forer: I move the answer be stricken. The answer was obtained while I was giving my objection. It came too fast ad 68 and H Myboull T meditionen to.

The Court: I don't think the question said you were confused. I never like to hear other counsel say the lawyer or someone else is confused. I don't mind if they say they may be wrong, but I hate for them to, lawyers to start practicing psychiatry in Court and say I don't think that is objectionable, Mr. Forer, I will leave it in the record. It's overruled; objection not sustained. Hear I as .100 Fig. and you By Mr. Cromwell's dependent blad theory we said hele

Q. Mr. Kardy, following this case, by that I mean following the presentment of this case to the Grand Jury and prior to the trial of this case in December of 1961, and also prior to the trial of Joseph Johnson in Anne Arundel County in September of 1962, did you have occasion to inerrogate or speak with or interview Joyce Roberts and that he did not actend. And did prior to both trials; o not von a trials. A. I did prior to both trials; Stewart Fosterf

Q. Prior to both trials? that timing live I. it els

A. Yes, sir. 1991100 at 14 F : assetti // od F. [fol, 137] Q. Was the statement which they gave you prior to both of those trials the same statement about which they testified in Court I and an wet administration for the

A. That is correct.

Q. At any time did you tell either Joyce Roberts, or Stewart Foster or any other witnesses in this case, who estified in Montgomery County or Anne Arundel County, what to say or how to say their testimony support factor

A. I did not

Q. Did you tell them not to say anything, these are the witnesses, not to say anything that had happened in the alt: Forer; How can be answer about . Then the question is doubly objectionable

A. I did not.

Q. In speaking with Detective Collins of the Montgomery County Police Force did you discuss with him a fact which you knew which you instructed him not to disclose unless

specifically asked?

A I did I told him not to disclose under any circumstances the fact that both John and James had active cases gonorrhea. I thought it would be prejudicial to their unustances.

when was it, do you recall, that Mr. Stedman Present of the Bar of Montgomery County was appointed ent the defendant petitioners in this case!

represent the defendant petitioners in this case? Logit was some time early in the fall, September, October, of 1961, as I recall benimens for rolleged : belirty of a still

with intention to rape, or were all cold on rape!

Q. And do you remember whether or not you asked him. or he saked you, to speak with you concerning this case! A. He called me, either called me or stopped by my o here in the Courthouse to discuss the case.

Q. And was the discussion which was had conducted in your offices or in his offices? While the said your offices or in his offices?

A. They were conducted at my offices here in the Courthouse. Arundel County, did you concent from either the County of the service of the last was at his reguest?

At his request.

Q. Did you discuss the case at that time, giving him any information?

A. I discussed the case fully with him. I told him who we expected to call as State's witnesses; I let him read all of the police reports, which I didn't have to do at that time, the new criminal rules as I believe weren't in effect at that time, but because of the seriousness of the case he was [fol. 138] appointed counsel, and I let him have my whole file, go over it, and look at everything in the file that I would not ordinarily do in the ordinary case. But, because of the nature of this case and the seriousness of it, as I say, I let him have everything that we had in our file.

Q. Mr. Kardy, thereafter, did Mr. Prescott ever come back to your office and make any additional inquiries of you for further information or further assistance?

A. Mr. Prescott, to the best of my knowledge, never asked me for another thing because he had everything that I had at that time.

Q. Did he ever come to you and have any conversation with you about trying to get Juvenile Court records in Montgomery County or Prince Georges County!

A. He never did.

Q. If he had come to you, would you have been any assistance to him that you could have been ?

A. I would

John and James case, that Jurenile records Mr. Forer: Object.

The Court: Why do you object to that!

Mr. Forer: So hypothetical a shift will be not a rectange

The Court: Objection overraled person move ab bat . O

The Witness: If Mr. Prescott had come to me, I would have assisted him within the law as I know it in Maryland. ope of the Courtnoise to discuss the case.

or but By Mr. Cromwelltone noteans to out say but

Q At any time, Mr. Kardy, in the presentation of this case to the Court and Jurors in Montgomery and Anne Arundel County, did you conceal from either the Court or the Jury any fact which you believe to be, or which you understood to be, admissible exculpatory evidence on the

A. I did not. Was the statement which .

Q. Did you suppress any evidence in this case t ted to call as Sinte's withesse

A. I did not.

of the police reports, which I didn ave to Mr. Cromwell: That is all ited I wa select language from out

Redirect examination barriogram [12]

de, so over it and look at everyt esuseed By Mr. Foreri to edt at ob vitranibre ton bluey

Q. Mr. Kardy, you testified that if Mr. Prescott had come to you to ask for your help in getting Juvenile Court records, you would have assisted him within the law as you know it now, the law as you know it is that he can't get the Juvenile Court record, is that correct?

time, but because o

th, to the best, of Tribliow Tellow The Mawer

Q. The law as you think you know it?

A. No, as I understand the law, Mr. Ferer, and you got the Juvenile Court records here, I am sure Mr. Prescott is able comsel, under the law I think there is a proceedingthat you followed ably because you are able counsel, to petition the Court to release the records, and I assume Mr. Prescott might have done that. But, as you also know, as a matter of law, and it was ruled in the Giles cases, John and James case, that Juvenile records are not admissible of the desendant politicaers though cases I the

O. Mr. Kardy, you testified that you never made a recommendation to the judge for a sentence of death?

The Court: I think it's very cont. borrobesi tad Arit

Q. The fact is though, that in your summation to the Giles Jury, you told them that you never usked that but you also suggested to them that they shouldn't tie the hands of the Judge; that the Judges know how to sentence, and therefore, they shouldn't make recommendations of Collins not to disclose the fact that that thebit, typem

Mr. Cromwell: Object to the question.

Mr. Forer: He went into this business; I didn't. He opened the door on cross-examination of moy if an W . O

f sadriogog

The Court: It seems to me I am going to permit it Overrule the objection, but Mr. Forer, it seems to me that you are getting into questions that I can't see what in the world they have to do with the decisions I have to make in this case. I will permit it, but let's try not to get argumentative in it sent that bearings all that su or reason

[fol. 140] The Witness: I did make that argument, because under the first count of rape, and without any recommendation of capital punishment, the Judge could suspend the sentence; the sentence under the first count in the indictment under which James and John Giles were tried. reads that the Judge can give them eighteen months, up to life, up to death, within the wisdom of the Court, and I have always argued to juries that my job is to prosecute without fear or favor to present the case as fairly as I can, Their job is to either find them guilty or not guilty, and the Judge's job is to impose the sentence. They could have imposed without capital punishment, and then, as well you know, under the Maryland law the maximum sentence then would have been twenty years, but I will also-

The Court: I think you had better ask him another ques-

Mr. Forer: I have been waiting for him to complete his answer. You the office that the meshood denglicity of a

The Court: You are giving Mr. Kardy—he is not campaigning now, but you are really giving him a chance.

The Witness is I am not compalgning, Your Honors it of ball is to on the stand, is that is the first part of ball

The Court: I think it's very good, Mr. Kardy, go right

in The Witness in Phank you it madt blot con youth solid

Mr. Fores: You will have to convince me to vote for him yet. Mr. Kardy, I believe you testified on cross-examination, by your side of the table, that you told Officer Collins not to disclose the fact that the defendants had gonorrhea!

MA. Phatris corrected and will be well responsed

dector of medicine! made and of amount of the control of its

A. No, he is not a doctor of medicine seed and aliestave

Q. Was it your understanding that Officer Collins is

competent to diagnose gonorrheat ob of even god bliow

A. Dr. Frank, the jail doctor, is the one that made the report to us that he examined both these boys and that we should immediately contact the Roberts girl and the [fol. 141] parents, so that they could take adequate precautions to have penicillin shots because both these boys had active cases of gonorrhea. That came from Dr. Frank.

Mr. Forer: I move that the witness' answer be stricken, that he be admonished to restrict his answers to the questions. I asked him whether it was his understanding that Officer Collins was competent to, or capable to diagnose gonorrhea, and then he gave me a long story about some Dr. Frank, which I didn't ask. I think it should be stricken; if I had wanted that answer, I would have asked for it.

Mr. Cromwell: I think he asked for it.

Mr. Forer: No, I didn't ask for it.

The Court: I will move it out of the record and restrict answers to the ones that are responsive to the question.

Mr. Forer: All right,

By Mr. Forer:

12

Q. So if I am correct, you instructed Officer Collins not to disclose comething that he couldn't possibly have testified to on the stand, is that what you are telling us?

A. I am not telling you that the Lakell : 1010 I all

Q. I see. But you told Officer Collins, who is not a doctor, not to testify on the stand-Mr. Porer: All right.

Mr. Cromwell: I- you showed to Mr. Crowsett show the Mr. Forer: -not to testify on the stand that the defen-Q. All right, was it regentled to standarodog bad strab

Mr. Cromwell: Object, as argumentative make the full

The Court: Objection overruled of belinger saw if A

The Witness I told him not to testify b nov bill. O integrality attacked drive Roberts and kunterflies and that

and - By Mr. Forer salas day as school betreded, asyat

Q. Will you please answer the question?

A. I would like to explain.

[fol. 142] Q. I would like an answer first.

A. I told him not to disclose that, yes,

Q. Why yest

A. May I explain its of parcel ma l

The Court: Yes, you may explain.

The Witness: Thank you, Your Honor. Mr. Forer, may I explain it? I told him not to state that because it would be prejudicial to James and John Giles.

child By Mr. Forer should be wondituible atmost suffer

Q. Yes. New, was it your impression that Officer Collins would have been permitted to testify on a medical question as to whether or not the defendants had gonorrhea!

Mr. Cromwell: Objection. It's irrelevant to this case. Mr. Forer: I will withdraw the question. and at add bloow Larragens you as ten!

trong By Mr. Forer: beet thought all us was

I will sustain the objection.

Q. In your long experience as an attorney have you ever heard a police officer testify on the medical condition of a defendant?

so they could take the mocessard pirking Mr. Cromwell: I have to object to the question The Court: Well, Mr. Forert Williams then manuscrin

Mr. Forer: Well, I withdraw the question. The Court: You and I and all of us have heard them try. Mr. Forer: All right. Dust and or victs to ton

mytel By Mt. Forer:

Q. All right, was it reported to you that Joyce Roberts Mr. Cromwell: Object, as argumentativlashronog bad

A. It was reported to me that she had not. Priod of T

Q. Did you disclose to the defense that the men that had allegedly attacked Joyce Roberts had gonorrhea and that Joyce Roberts did not have gonorrheatono'l .TM va

A. Mr. Prescott read the report. The report read, Mr. [fol. 143] Forer, that Dr. Frank made an investigation of John and James Giles wans an sall bluow I

Mr. Forer: I object. He is again not answering the ques-

The Witness: I am trying to-

Mr. Cromwell: I think he is answering the question he asked, whether he related that and said it was in the report.

Mr. Forer: The question is capable of a yes or no answer, and not a speech, miot bar samet of remining me

Mr. Cromwell: I think Mr. Forer is making the speech. The Court: I don't know. I think he is trying to fairly answer that question; maybe he can't answer it "yes" or "no." What he said, before he was interrupted, as I understand it he gave him the police reports, or certain reports which stated Dr. Frank reported they had gonorrhea. Seems to me that would be tantamount to "yes." 1) .11

Mr. Forer: Is that your answer him liew I 19910 d ald

The Witness: That is my answer. I would like to further go on; when Mr. Prescott read the report, the report read Dr. Frank did examine both these boys here today and said they had active cases of gonorrhea, and further stated that the girl's parents should be notified immediately. so they could take the necessary precautionary methods.

Mr. Forers Move it be stricken and not responsive to anything and completely irrelevant to the question.

The Court: See no harm in it. Overriled ... word the life of and, laving functions dollars or product lexiborational lies.

By Mr. Forer:

(Witness louves the sound.) Q. Did this report you showed to Mr. Prescott show the girl did not have gonorrhea? as an adverse witness.

A. The report didn't state that.

Q. In other words, Mr. Prescott had information that the defendants had gonorrheaf minutes past 2:00.

A. That is correct.

[fol. 144] Q. But he did not have information that the girl did not have gonorrhea, as far as you know!

A. I believe I told him that, that she did not have gon-

orrhea.

Q. And when Mr. Prescott asked Joyce Roberts on crossexamination whether she had, or ever had, gonorthes, you objected, didn't yout

A. That is corregt.

Q. And the question was excluded?

A. Because, I objected because it was sustained, I guess

I was right, I don't know.

Q. Sometimes I get objections sustained; don't you think-

The Court: Sometimes we sustain them and get overruled on works all values of a same and the

The Witness: That is right of bear of of for the area

ing or hawking anything, whethor it's pur, one, propaganda, solow By Mr. Forer: a smalldag of

Q. Don't you think'it was your duty to inform the jury and the court after Mr. Prescott had tried to ascertain the information and had failed, that it was your duty to inform the jury and the Court that this girl, who had allegedly been raped by these two men, didn't have gonorrhea and they did for " and related

Mr. Cromwell: Objection.

The Court: I think that would be a question of fact that you drop in my hands right now, the significance of it. I will sustain the objection.

Mr. Forer: No further questions a word and a transfer of the try

(Witness leaves the stand.)

Mr. Forer: We will ask Mr. Cromwell to take the stand

The Court: I think, Gentlemen, we had better recess for tunch. It's 1:00 o'clock. We will recess until fifteen minutes past 2:00.

Process It maitantroins soul fon hill ad tull the filet furt

[fol 145] The Court: Counsel, Petrioners, and the parties to this trial, and the spectators, it has been called to my attention during the recess that persons interested in this case have been selling, word hawking used, certain terminology to this case in the Courtroom, on the Courthouse steps and the corridors of the Courthouse. I am compelled to tell you that that type of thing is improper. Those of you who may be here, who have been doing that, must cease to do it.

If this had been a jury trial or some other, it would have been grounds for a mistrial and possibly contempt for the persons who were doing it within the confines of the Courthouse. Your Courthouse, our Courthouse is not to be used as a stage for performances or a vaudeville show, and it's certainly not to be used for commercial purposes for selling or hawking anything, whether it's our own propaganda, which you have a right to publicize and peddle, as it were, if you like, but please, not in the Courthouse or on the Courthouse property. You may do it on the streets; that is perfectly all right, and those who have been doing it here are admonished to cease and desist from it.

Call your next witness.

Mr. Seupi: Mr. Cromwell.

Ar Cromwell, Abjection, starting first of tast botate Ar Court, A think that, would be a guestion of fact that you drop in my hands right now, the significance of it. I will sustain the objection.

JAMES CROMWELL, was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows: It is man the same and the swoller as belief of my of which end on howevery lens which is so it was:

Direct examination. I and it dads once with lead it

pendently recell that; che stated that shed did not have By Mr. Scupi: Maistai mid plan merupatata

- Q. Would you state your name, please sir?

 A. James Cromwell.
- Q. And your occupation, sirt
- A. I am an attorney at law. fad bearing and lawing
- Q. Could you tell us whether in 1961, you were a Deputy State's Attorney for Montgomery County! [fol. 146] A. I don't know whether I was Deputy State's Attorney. I may have been Assistant State's Attorney at
- that time. I have, I think, been Assistant State's Attorney -I think I may have been Assistant State's Attorney at that time.
- Q. Were you associated with Mr. Kardy in the prosecution of the Giles case in December of 1961
- A. That is correct, and in the Johnson case, and also participated, represented the State at the preliminary hearing of all three in Silver Spring prior to their indictment.
- Q. Now with reference to the preliminary hearing you have just mentioned, you were present at that preliminary hearing
- A. I was present at that.
- Q. Did you hear the testimony of the prosecutrix, Miss Roberts, at that preliminary hearing!
 - A. Yes, I did. I interrogated her myself.
- Q. Now do you know whether or not at that preliminary hearing Miss Roberts stated that only two persons and not three had had sexual relations with her that night?
- A. The word "sexual relations," I don't know whether that word was used. I think the word which I asked her initially, in my questioning of her was whether or not, and all three defendants were there, whether or not she had had intercourse with each of the defendants at the prelim-

inary bearing, and I pointed to each of them in turn! as and, having thest boar duly swing rates lexinging land, bus

With reference to one of them, and I do not at this time, of my own independent knowledge, know which one it was: I feel fairly sure that it was John Giles but I don't independently recall that; she stated that she did not have intercourse with him, initially, to signify and the

Q. You mean in your initial examination, is that what

you mean by "initially!"

A. James Cromwell. A. When I asked her whether she had intercourse with one of them, she stated that sheldid not. She later corrected

this, but initially she stated she did not

Q. Now let me ask you, did you know at the time of the trial in December, 1961, that from April to October of 1961, and including July, 1961, there was a pending Juvenile [fol. 147] Court proceeding against Miss Roberts in Prince I think I may have been Georges County !

A. I had no knowledge of that.

O. You had no information whatsoever with respect to any pending Juvenile Court proceeding in Prince Georges A. That is served, and in the Johnson :

A. Absolutely no information about any proceeding in

Prince Georges County in the Juvenile Court.

Mr. Scapi: Those are all the questions we have.

Cross examination.

zin By Mr. Kardy: vaonates) out agent pov

Q. Mr. Cromwell, did Joyce Roberts at the preliminary hearing that you testified to, did she subsequently correct her testimony as to having intercourse with James Giles. John Olles, and Joseph Johnson at that preliminary hearingf

A. Tes, she did. After she was asked the question, did she have I think I asked her did she have intercourse, I am not sure of the exact words I used, but I believe it was did she have intercourse with each of the defendants,

and the said that she had not with one; as I recall the chronology of what happened there was an attorney there who represented, or someone there who inquired, maked some questions on behalf of the defendants, and I haven't any idea who that is at this time, I don't remember, I the question was asked by him, or by me, "Now are you sure that you didn't" that this one individual, whoever it was, had no intercourse with you! Are you sure there wasn't any intercourse, she said, "No, he did not reach a climax;" and I recall thereafter asking, "Did any part of his private parts enter you?" and a statement—words to that general effect; I can't remember at this time the exact words used, the answer at that time was that he did not reach a climax, but he did enter me. It was explained at that time on the question, either by me or the judge or by this other person who was there that she had understood by the word "intercourse" that you had to have a climax before that was intercourse, and she corrected her testimony in indicating there had been a penetration, but

[fol. 148] Mr. Kardy: No further questions.

Mr. Scupi: No redirect, Your Honor, Il A trup and The Court: Mr. Cromwell, I would like to ask you a question or so. You referred to the word "intercourse" and she said she didn't have intercourse with one of them, and when she explained it, she referred to a climax. Was the word "rape" or "force" used in any respect in her interrogation at the preliminary hearing to which she replied, if you remember? · Direct examination

The Witness: I can't remember, Judge Moorman, whether the word "rape" was used, or specifically what the words that were used. She was asked fully about what happened from the time she got to—all about the event and all of the circumstances which led up to this incident. I don't remember whether I asked her any word using, any sentence using the word "rape." I don't recall that. The only-she did testify as she did at the

trial of this case about the circumstances which had led to her being taken into the woods and why she submitted. The Court: At that interrogation of her preliminary. hearing, was there any evidence elicited from her or her witnesses to the effect that she consented to having intercourse in her own statement, with one or any of them had The Witness: No. In point of fact, she stated that she

it was sindeno alte source with your Are you shaton bid

The Court All right that is all section effit yas I'nsaw

(Witness leaves the stand) berrait here it has "; semile

Mr. Forer: Your Honor, petitioners rest, its Istange tail!

Mr. Cromwell: Lieutenant Whalen and othe bean abree

The Court: Now. Counsel for Petitioners, offe doctor didn't appear. Of course, it was citation for contempt. Now you rested. The Court was to make it clear that if you feel he is a necessary witness, this Dr. Doudoumopoulis, that the Court will give you an opportunity to bring him in and continue it now, but you rest frantseilming vacanitses [fol. 149] mMr. Porer: Yes. proceeding to from saw in tank

The Court: All right.

Mr. Forer: We rest.

The Court: All right. Swear the witness.

Mr. Cromwell: Lieutenant Whalen, I believe, has already been sworn, Your Honor.

Mr. Kardy: No further

The Court: Lieutenant, of course, the oath you previ ously took is still binding. You may be seated. the word "rape" or "force" users ingivitA lesentry on the preliminary hearing to which she replied.

Direct examination lower is the second nor it.

tante with By Mr. Crouwell : Bu "agan" brow sail and folly

Q. Lieutenant Whalen, for the record would you state again your name of one state out to be but topy out

Q. And you are a Detective Lieutenant at Wheaton-Glemmont in charge of the investigation of this case! A. Tes, sir.

Hot. 149a

Q. You previously testified?

as Ar Yes, sir work was more more and any all and all Q. At any time during your investigation of this case, or at any time when you had occasion to consider this case with the State's Attorney's office, or members of the Police Department under your supervision, did you, or to your knowledge, did anyone in the Police Department tell any witnesses in this case to lie?

A. No, sir. sale) Wall't the hills to salmot Q. Did you, or did anyone in the Police Department to your knowledge withhold evidence of which you thought evidence which you told us; did you withhold any thing from us as the State's, Mr. Kardy and myself and the prosecution in this case? Whelso, Jodge Alfred

A. No, sir.

Williams.

Q. Were all of the facts which you knew and understood reported in the police report? The said of the said space

To almose the business of rettain benefities evoludecoplesed thirted of devente of a test of atom as a constant, the nicles All our paradest here's erock by maintaking limity and of lander and incomes a state of debase intains with motival by and break now not bette excluded and the standard for the standard section desired approved a mil nic. employed admirate Control in did a subject to the second and the second as the second a at their second history reather one will dont the type walling said Hoyes Clared discussed and and the said and

A. That is correct.

Mr. Cromwell: That is all. ple alward ded to largice him this hold of this soul

day through the salary in the salary and the birth

('gases of Montgomery Touch, Md. Mr. Testievika Wienesse Swore (201.08 dot batel

"Mus "Lanters spaced that the fives of 2003 Octaborpe St., Dyattaville, She has three married children, and Jayee

200

[fol. 149a] case about the ! bodinant shootypropus Y D ! IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

omposide to pervious Exhibit No. 21 year his fer same said appliance of noisuese but now with amili you is it.

with the Biane's Attechning a concess or encourees of the Police anor of the move by Misc. No. 800501 tohan the saturage (1 buonieles did anyonesin the place Department tell any

The Court James V. Giles and John G. Giles, Tie ON .A.

ersholding or did anyone in the Police Department to the ball not white to bladdie bladdie ozbewom they

witnesses in this case to liet.

evidence which you told not did you withold any tinng and Lane Warden of the Maryland State Penitentiary," mort The Charge New Counsel for Losso said in Respondent.

PERMISSION TO EXAMINE JUVENILE COURT RECORDS that the Court will give may an opported

I hereby give permission (if said permission be deemed necessary) to the Court and counsel for both sides in the above-captioned matter to examine all records of the People's Court for Juvenile Causes of Montgomery County. Maryland, pertaining to Joyce Carol Roberts; to Evelyn Purdom, Clerk of said People's Court, or her agent, to produce and make available said records for use, including introduction into evidence, in the above-captioned matter; and to any persons with knowledge thereof to testify about any aspect of the proceedings in said People's Court involving said Joyce Carol Roberts.

Q. And you are a locative Lightenant at Wheaten

Ulanment by charge of the investigation of this case!

Three examinate ALFRED D. NOYES, By Mr. People's Court Judge for Juvenile

Causes of Montgomery County, Md.

Dated: July 20, 1964.

A. Yos, sir.

[fol. 1496] the savel brestend tall paland passed with white

said alapse and Partrownes' Exercise 3 you In the debate total

hidgenen benderlies tot bi auch the deteries. Idealner ihrenight de tears, thimsloody and to Beaper odica visite and evidence as

JUVENILE COURT PORMAL RECORD #1606-61

litari vhotsus evijoyce Roberts/w/15 yrs. thauerd ed ens 3803 Oglethorpe St. of eldseer Hyattsville, Marylands eragnoff and

9/5/61 Case in Court: Those present: Joyce Roberts, Mrs. Roberts, Mr. Lynn Adams, Det. Whelan, Judge Alfred D. Noyes, Norine Malless, others and tadt haters suchal, all

cate, She was in the hospital for nine days-

. Occasion for HEARING: Out of parental control and living in circumstances endangering her well-being; and also that said child is a necessary witness in behalf of the State in regard to a criminal case pending in the Circuit Court for Montgomery County.

SUMMARY OF HEARING: COURT advised that this came to this Court from the State's Attorney Office because of difficulties at home, and also she was a state witness in a case where two adults are charged, and it seems her situation is one where she has been at the hospital for taking pills and there is concern about her. This Court has to decide if she should be placed temporarily at Montrose for her own safety and also make sure she will be a State Witness. Joses Konsurs stated she wanted to die and

JONGE BOBERTS stated that she is 16 years old. Her birthday is in Tehruary. She understands what it is to be a living a happy life. She took 30 bufferen pushning otate

sent to the hospital and also took some little pink pills from ALL TRATTYTING WITHERES SWORD COLLECTIVELY Dear add

Mas. Roberts stated that she lives at 3803 Oglethorpe St., Hyattsville. She has three married children, and Joyce is the only one at home. Her husband lives at home and [fol. 149c] she knows he is here today, and he trusts her judgment and the Lt's and the Court's. Mother brought Joyce here today at the request of Lt. Whelan.

Lr. When a stated that the State Attorney requested she be brought here to hold in protective custody until hearing.

Mrs. Roberts stated that the is agreeable to it, and wanted Joyce to understand it was not for punishment. She was in care of a psychiatrist until released so she still needs medical care. She was in the hospital for nine days—Prince Georges County Hospital. Dr. Dumoholis is the psychiatrist. maked if the psychiatrist.

Mr. Anams stated that he spoke with the Dr. and the Dr. said that Joyce needed treatment and could benefit from it, and was in a way asking for it. It would have to be over a period of time. About going to Montrose, the Dr. stated that he would rather the parents made that decision themselves, and it would be all right as far as the Dr. was concerned.

Cover advised that there is a psychiatrist comes to Montrose and if the Court and Montrose could get a statement from this Dr. perhaps she could get some treatment while there.

is to use for two weeks, but could not get it this morning since that tibe underup, but could not get it this morning since it has to be underup. Sidne bala bus visits awo red rol

JOYCE ROBERTS stated she wanted to die and there was nothing to live for. She still feels that way life doesn't make any difference to her she does not see any hope of living a happy life. She took 30 bufferin pills and was sent to the hospital and also took some little pink pills from the medicine cabinet. Joyce Roberts stated that part of their problem is difficulty at home. There is a problem because Mr. Roberts is much older than Mrs. and a lot of

[fol. 149d] it stems out of his jealously and talk of sex etc. It is "one brewing mess" all the time. He feels his job is to provide and that is all. It goes on and on until he tears things up, and then he replaces them. The other three children were able to stand it somehow. He is Joyce's father.

JOYCE ROBERTS stated that she got along all right at school last year.

Court wondered if she should go to Montrose or to Springfield.

Mr. Adams stated that he spoke with the family physician and the psychiatrist, who said he felt he was blocked because the parents have not gone to see him.

Mrs. Rosenzs stated that she left messages at the hospital and with her doctor, but she never heard anything.

JOYCE ROBERTS stated that he never came to see her in four days. Joyce could not get contact with him.

LT. WHELAN stated that Dr. Connor at the Hospital said Montrose or Bosewood would be all right.

DISPOSITION: Joyce Roberts is placed under the jurisdiction of the Court and committed to Montrose School for Girls with authorization to transfer to any Institution in Maryland. Case continued pending further orders of the Court.

4/30/62 Closed—No longer residing within the jurisdiction of the Court.

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IN THE CINCUES COURT FOR MORTOGRAPHY COURTS, MARYLAND

MERCHANDUM AND ORDER GRANZING PETTERON FOR RELIES
UNDER THE POST CONVICTION PROCEDURE ACT

Miscellaneous Petition No. 3005

3. That under Rule 567 rectimes day hint upon motions for a new arial based regint New Market evidence is un-

10) anyone that a sufficient G. Green with the land of the way to

Hearing Under Post Conviction Procedure Act.

Joseph Forer, Hal Witt; and Richard J. Scupi, for Petitioners.

Violation of the Seath Samendaged to the United

Leonard T. Kardy, State's Attorney and James I. Cromwell, Deputy State's Attorney, for State of Maryland.

On December 5, 1961, in the Circuit Court for Montgomery County, the Petitioners, James V. Giles and John
G. Giles, were convicted by a jury for the come of rape.
They were sentenced to death. The Court of Appeals affirmed the convictions July 18, 1962. Giles et al. v. State,
229 Md. 370. Their appeal to the Supreme Court of the
United States was dismissed. 372 U.S. 767. On November
16, 1962. Petitioners filed a Motion for a new trial based
on newly discovered evidence. The Motion was denied
upon the ground that Bule 567 of the Maryland Bules requires such a motion to have been filed within three days.
The denial was affirmed by the Court of Appeals, Giles v.
State, 231 Md. 387.

On October 24:1963, Governor J. Millard Tawns commuted their sentences to life imprisonment.

Petitioners now seek relief under the Post Conviction Procedure Act, Art. 27, Sec. 645A. Their Petition with an oral amendment raised four contentions and alleged that they are unburfully imprisoned because of dealer of dup [fol. 151] process under the Fourteenth Amendment to the

United States Constitution. The grounds for relief are as tollows: M. NTWSOD TREMPORTED SON THEORY STREET, STR

- 1. The State failed to disclose to the defense useful evidence and information.
- 2. That the State's witnesses committed perjury with
- 3. That under Bule 567 the three-day limit upon motions for a new trial based upon newly-discovered evidence is unconstitutional and prevented Petitioners from moving for a new trial upon new evidence available to them.
- 4. That Petitioners were denied the "Assistance of Counsel" in violation of the Sixth Amendment to the United States Constitution, made obligatory upon the State by the Fourteenth Amendment, in that at Petitioners' trial there was admitted evidence of statements made by them to the police after their arrests in response to interrogations designed to elicit incriminating statements, although petitioners had not been warned of their constitutional right to remain silent.

Before proceeding to a discussion of the foregoing contentions the facts are briefly summarized as follows:

At the trial the principal witnesses for the State were the prosecutrix and Stewart Fester, who had been her except on July 20, 1961, the night of the alleged rape. The State's evidence was to the effect that Petitioners and a third man Joseph E. Johnson, Jr., came upon the car occupied by the prosecutric and Foster, parked on a sealuded country road. The evidence that follows is in dispute that the prosecution of the second second

The State claims that the three men demanded the given perget, a window was broken and Foster was struck in the face by a rock. The girl ran from the car for a short distance. She was followed and allegedly raped by the Relitimers and Johnson.

The refuse claimed, first, that the assault upon Foster

The defence claimed, first, that the assault upon Foster in re-

sponse to a request of Petitioners for digarattes, and second, [fot 152] that John Giles never had intercourse with the girl, and third, that the girl not only consented to intercourse with the other two, but suggested and invited it.

ness is in issue and crucial if the Petitioners are to have any hope of success.

Abining limited at Equality and a success of the production of the petitioners are to have any hope of success.

THE PETITIONERS CLAIM THAT THE STATE FAILED TO DISCLOSE TO THE DEFENSE INFORMATION WHILE WOULD HAVE APPECTED THE CREDIBILITY OF THE PROSECUTEIN; THAT STORE FAILURE ON THE PART OF THE STATE IS A VIOLATION OF DUE PROCESS, AND IS, THEREFORE, GROUNDS FOR RELIEF UNDER THIS ACT.

In the case of Strosnider v. Warden of the Maryland Penitentiary, 228, Md. 663, the Court held that suppression by the State of evidence tending to exculpate a defendant is a ground for relief under the Post Conviction Procedure Act.

The petitioners rely primarily on the case of Barbee v. Warden, 331 Fed. 2d 842. This case supports the proposition that the State has a duty to disclose significant exculpatory information to the defense; that the fact that the police and not the prosecution were aware of such information does not neutralise the error. It was further held that there was no need to show that the defense requested such information. The Barbee case, in discussing what would constitute exculpatory evidence, quotes from the case of Griffic against U.S., 87 Appeals D.C. 172. "The case emphasizes the necessity of disclosure by the procesution of evidence that may reasonably be considered admissible and useful to the defense. When there is substantial room for doubt, the prosecution is not to decide for the Court what is admissible or for the defense what is useful."

The petitioners contend that the State failed to disclose information that would come within the rule in the Borboo

ad Griffe cases. They suggest many points, but it is our (fol. 163) view that the significant ones are as follows: First, that the prosecutrix made a claim of another rape between the time of the alleged offense and the trial, and second, that after the alleged rape and before trial, the prosecutrix had taken an overdose of sleeping pills in an ttempt to commit suicide.

The petitioners have shown that the police were aware of these two points. In testimony at this hearing Detective Lientenant Lloyd M. Whaler of the Montgomery County Police Department in answer to the following questions stated and exercises. That betate

Q. Did you hear that there had been a charge that Joyce Roberts had been raped by two men in August of 1961, just before she took these pills?

A. I received a call from the family stating that the

nois girl had been raped.

O Did you hear that Joyce Roberts, sometime in late August, 1961, had attempted to commit suicide! A. I had knowledge of she had taken some sleeps diate has a duty to disclose at

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cution for the the decident the decident that the fact that of Q. You knew that there was soon coming up a trial 3 of John and James Giles on charges that they had raped Joyce Roberts on July 20, 19611

A. Yes, the mortel aur carbaniblatichies dans in what ownid concentrates and participation of the way

Further, the Hyattsville City Police Report by Corporal K. Moureau, submitted as an exhibit to the Petition states: "Joyce Roberts was put in hospital on August 21, 1961, approximately 5:30 a.m., and is now held for a mental patient. This was reported to Prince Georges County Det. Wheeler, who is working on the case. Joyce Boberts is in Prince Georges Hospital due to overdose.

Also, the Frace Georges County Police Report made by Det L. R. Wheeler, Exhibit 25 of the Petition, states: "At

8:40 p.m. on September 1, 1961, the alleged visite in the case was interrogated by the undersigned in the presence of the mirel in charge of the wing on A Wing in Prince [fol. 154] Georges Hospital. At this time this victim is being held in A Wing. Prince Georges Hospital for mostal observation as she had allegedly attempted suicide in early A.M. of August 27, 1961. The first to no impostor a at Ind.

The knowledge of these police officers is imputed to the prosecution. (Barbee v. Warden) and the record indicates that this information was not disclosed to the defense.

The question that this Court must now decide is whether the above information in relation to the alleged attempted suicide and the second complaint of rape can "be reasonably considered admissible and useful to the defense."

With reference to the overdose of sleeping pills taken by the prosecutrix, it appears to this Court that such information does fall into the above category; that is, that it can be reasonably considered admissible and useful to the defense.

Our research has failed to uncover any Maryland cases on this point. The question has been considered in a number of other courts, both Federal and State; and the results of those considerations are as follows:

First in United States v. Hiss. 88 Fed. Supp. 559. The United States District Court for the Southern District of New York held that a witness may be discredited by evidence of instally or mental derangement, and such evidence is not merely for the judge to decide on the preliminary question of competency but goes to the jury to affect credibility. This case involved the prosecution of Alger Hiss. The mental stability of the Government's key witness, Whitaker Chambers, was being questioned.

In People v. Coules, 224 North Western, 387, a case that went to the Supreme Court of Michigan in 1929, the Court held that evidence offered to prove acts of the prosecutrix of sexual perversion and lascivious conduct was errone only excluded. This was a prosecution for statutory rape and the Court further stated that such evidence bearing

alm the take of State s. Pooles, in the Supreme Court of North Caroline, 85 6.10 2nd 342, 1955 cane, the Court held that in a prosecution for unlawfully and willfully maintaining and operating a building for the purpose of prostitution, the question propounded on cross examination to the State's witness is to whether she had tried on one occarion to commit suicide was permissible for the purpose of impeaching the witness credibility. In this case the defense countel asked the prosecution's witness if on one occasion, she had tried to commit suicide by eating some With reference to the overdose of algebing siniquided

In the 1961 case of Powell v. Wiman, 287 Fed. 2nd 275, The United States Court of Appeals for the Fifth Circuit dealt with this question in a habens corpus proceeding. In this case the defendant had been accused of robbery and had been tried and convicted. One of the State's key wit-nearing an accomplice of the defendant in the robbery. He had pleated not guilty by reason of insanity. The State had evidence to the effect that this prosecuting witness had been confined in mental institutions in three different states. The State suppressed this information from the defense and the Court held that this witness mental condition was a gracial issue. It further stated that evidence of his insanity, if not sufficient to establish incompetence as a witness, would have gone to the weight and credibility of

hik testimony

that research has the overed one case whose holding as contrary to the above cases. This is the case of Guerell v. Sinte of Alabora, 105 S 2nd 541, 1958, It concerned a prosecution for according to grant market. The Supreme Cours of Alabora, beld that the trial court was not in error in remains to posmit the defendant to ask the state's witness the following questions:

and the Court dirates placed that and and and bearing

The fact is that since this trouble your mind h As the facts develtitlened best and all

The fact is that since theretwould, you draw been to

a hospital, heven't you?

I (fol. 166) . You have been since this crime you have been in a hospital for treatment for a servous heated pendition?

motive attach The Court pointed out that the aredibility of the witness could be attacked by showing a mental ment existing at the time of the trial. But it further a that questions such as these would meraly tend to a mental condition or mental derangement at a time to the trial, or not contemporaneous to the matter be testified about, are not admissible as impeaching the ar ibility of a witness. The court goes on to say that it is no objection either to the competency or credibility of the witness, that he may be subject to fits of derangement it at the time the witness is offered it appears and this is for the Court not the jury to decide—that he is sane.

An analysis of all of the above cases leads the Court conclude that the majority rule in this country would allow evidence tending to show mental derangement of a witness to be admitted for the purpose of impeaching the witness credibility.

The second important point with reference to suppre sion of information by the state concerns the fact the prosecutrix has made a second claim of rape between the time of the alleged offense and the trial Petitioners argue that evidence of such a nature is admissible for purposes of impenchment in a rape case. The case of Smallwood v Wanden, 206 F. Supp. 325 is used as an anthority to support

is contentioning with his sense but the name in the labelens of their the United States District Court for Maryland. The peti-tioner had been convicted and imprisoned for rape. The main cours for his petition was tradequate representation at his trial by his counsel. The petitioner also distined that

italiaformation had been withheld from his counsel by the cosmission. As the facts developed it was shown that the physical condition and reputation of the prosecuting without Specifically, they know that she had claimed that she had been asped soon nightons years before.

[fol. 157] The Court held that even thought the State's

Attorney did not not with any improper metive, that he did suppress this evidence. The Court further stated that the motive was immederial if the evidence was vital, that is was likely to have affected the result of the trial. This evidence, taken as a whole, justified a serious doubt as to the chartity of the prosecuting witness and might well have smected the results of the trial. The Court held that its

It is significant to note that in the Smallwood case the out claim of rape took place some eighteen years before, wherein in this case the alleged rape occurred before the trial but after the event that led to the defendants prose-

With reference to the above two points concerning the attempted suicide and the second claim of rape, it is not pessessary for this Court to hold, and we do not hold, that such evidence is or would be admissible. However, after a thorough examination of the law in point, we do hold that such information could be reasonably considered admissible and useful to the defense.

With reference to the same basic point of suppression

of information as the state the Petitioners cause three

of impeachment in a capa case, The gase of School and

I Pirst, that leate had indicated that while both Petitioners had a venercal disease at the time of the alleged rape, the ris did not have one when she was examined soon there of a large this lead to be filter land, being the country of

Second, that the prosecutrix was an extraordinarily unhaste and premisenona gir adT deanure of the sist will

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Third, that the prosecutris was on probation at the time of the offense beings ad notes vinitag bettimmen nathrall

We feel that all three of these points are without merit for several reasons, the most important of which is that the defense knew of the above three points at the time. of the trial constant fortheign and organization and ministration

The fact that the defendants had knowledge of these points has been illustrated by the defense counsel's cross-[fol. 158] examination of the state's witnesses at the trial, and the direct testimony of the petitioners themselves and the fact that the defense counsel had an opportunity to in fact, did examine the state's entire file, including the police report prior to trial.

Thus the effect of the petitioners' claim is that the State suppressed information which the defense was, in fact? aware of at the time of the trial. We feel that this contention is without merit.

to bing that he knd connected precitive in accordance with the THE SECOND MAJOR CONTENTION OF THE PETITIONERS CON-CERNS A CLAIM THAT STATE WITNESSES COMMITTED PER-JURY WITH THE KNOWLEDGE OF THE STATE IN 1811 AND

First, they allege that the prosecutrix escort, Stewart Foster, testified that he and a companion had their bathing suits in the car. The police officer who searched the car stated that he had not found any bathing spits in it and his companion stated at the hearing that he did not have his suit in the car.

It is difficult for this Court to understand how the above facts are important to this case. The mere fact that the police officer did not find the bathing suit in the car does not prove that Foster was lying and the location of his bathing suit has no bearing on the crucial facts alleged by the State. Furthermore, Foster stated at this hearing that he thinks he might have been wearing it. d. United States, in the

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be State withheld from the de-

Second, the Petitioners contend that Det. Set. Stanley Harding committed perjury when he denied that the police had told him that easy two boys had attacked her. The Petitioners attempted to prove this perjury by offering contradictory statements by the sister and mother of the defendants. The state has explained the confusion in this area by showing that the victim thought that rape required both penetration and emission. She stated that one of the defendants did not have an emission but definitely had penetration. This explanation sounds reasonable to this Court; and we do not feel that the petitioners have proved that peripred testimony was offered by the State milior typort prior to trial. in this regard.

[fol 150] Third, petitioners again claim that Stewart Foster perjured himself when he denied that he cursed the petitioners. To prove this, they offer testimony by one John Patrick Stevens who states that Foster had admitted to him that he had committed perjury in making such a denial, and that he had done so in accordance with the suggestions of State officials. At the hearing, both Foster and the State officials denied this allegation and this Court feels that Stevens testimony is not sufficient for us to ressonably infer that the State was guilty of any wrongdoing. The petitioners cannot satisfy this Court that the State officials were guilty of such gross malfeasance by offering merely secondhard information based on an out-of-court statement by a person whose credibility the petitioners themselves have attacked.

For the above reasons this Court holds that the points reised with reference to the allegation that the State witnesses committed perjury with the knowledge of the State are without meriting and tieffer that to vote ton

bathing suit has no bearing on the crucial factions thread to by the State. Furthermore, Poster stated at this lunarion that he tained he might have been wearing they are start

THE THIRD MAJOR POINT THAT THE PETITIONERS RAISE AS CONTAINED IN THE ALLEGATION THAT MARYLAND RILLS 759(2) AND 567(a) ARE UNCONSTITUTIONAL.

In effect they provide that a Motion for New Trial shall be filed within three days after the reception of a verdict. As pointed out in the State's brief, the Court of Appeals of Maryland has decided this specific question against the petitioners. 231 Md. 387. The Court holds that this contention is also without merit.

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IN THEIR FOURTH MAJOR POINT PETITIONERS ALLEGE THAT THEY WERE DENIED THEIR CONSTITUTIONALLY PROTECTED RIGHT TO COUNSEL BY THE ADMISSION INTO EVIDENCE AT THE TRIAL OF STATEMENTS MADE BY THEM TO THE POLICE.

The petitioners rely on the recent United States Supreme Court decision of Escobedo v. Illinois, 84 S. Ct. 1758, June 22, 1964.

[fol. 160] The case of Parker v. Warden, ____ Md. ____, 203 A. 2d 418, discusses the effect of Escobedo and, without deciding whether it is effective retrospectively, they distinguish it on the grounds that it was not alleged or shown that counsel was ever requested by the defendants prior to a brief interrogation by the police. The facts here are similar to the Parker case in that there was no request for counsel or permission to consult with anyone else.

· For this reason we feel that the petitioners' argument in this regard is also without merit:

CONCLUSION AND ORDER

It is the opinion of the Court, for the reasons stated herein, that petitioners were denied due process of law under the Fourteenth Amendment to the Constitution of the United States in that the State withheld from the de-

ORDERED that the Petitioners, James V. Giles and John G. Giles, be, and they are hereby granted a new trial, and it is further of Marytand has slouded this appellic anostion

ORDERED that the Petitioners be delivered to the Montgomery County Jail and held in close confinement to await their trial, unless the State appeals the Order herein within thirty days from the date of this Order, in which event the Petitioners shall remain in the custody of the institution where they are presently confined.

A souther Trivial Rouse Walter H. Moorman, Judge THE THAT OF MENESTS MADE BY THEM, TO SEE TO THE

[101 161] Shire Wellay Trable out last leviled and first out of IN THE COURT OF APPEALS OF MARYLAND

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are similar to the Parker case in that there were JAMES V. GILES and JOHN G. GILES. From this reason we rest that the petitioners with them

Hammond, Horney, Marbury, Sybert, Oppenheimer, Barnes, Carter, J. DeWeese (specially assigned), JJ.

It is the opinion of the Court, for the reasons stated wal to Oresson Br Catrin, J .- Filed: July 13, 1965: . die vol

[fol. 162] This is the third time the appellees, James V. Giles and John G. Giles, have been before this Court in

connection with matters pertaining to their convictions for rape. In Giles v. State, 229 Md e70, 163 A.2d 350 (1962), appeal dismissed 372 U.S. 767 (1963), we affirmed convictions for rape committed by the appelless on a straight year old girl in Montgomery County on July 20, 1961. We subsequently affirmed the denial of a motion for a new trial based on newly discovered evidence in Giles v. State, 231 Md, 587, 190 A.2d 627 (1963). The case at bar is an appeal by the State from the action of the Circuit Court for Montgomery County in granting the appelless a new trial on the rape charge under the provisions of the Post Conviction Procedure Act after it had ruled as a preliminary matter that the appelless were authorized to take depositions in post conviction proceedings. The new trial was awarded following the finding of the lower court that the process tion had suppressed and withheld evidence from the appelless in violation of their constitutional right to due process.

On this appeal the State raises two questions. First, it contends that because the rules relating to the taking of depositions in civil proceedings are not applicable to proceedings under the P.C.P.A., it was error to permit the taking of depositions. The primary contention of the State, however, is that the new trial was improperly granted for two reasons. One, that the failure of the prosecution to turn over to the defense information it had pertaining to an alleged rape complaint, concerning an incident involving [fol. 163] the prosecutrix (but not the appellees) that occurred after the rape for which the appellees were convicted but before the trial of their case, and, two, that the neglect to inform the defense of an alleged snicide attempt by the prosecutrix following the alleged rape incident, also before the trial of the charges against them, did not deny the appellees their right to due process under the facts and circumstances of this case the factions interesting and taght both

Aside from the questions presented by the State, the appelless, without having filed a cross appeal, raise two questions decided adversely to them at the hearing below. They contend that Rule 759 a, together with Rule 567 a, requiring

three days after verdict is a denial of due process; and that the admission into evidence at the trial of the original case of statements made by them when they were prime suspects, without advising them of their right to remain silent, and at a time when they were without counsel, was also a violation of due process. While the new trial was granted on the basis of the suppression of evidence relating to the alleged rape complaint and alleged suicide attempt the appellees would have us review all evidence concerning the sexual promiscuity of the prosecutrix, her claimed near probation status at the time of the rape, and her mental condition and health on the theory that evidence pertaining to these mat-

ters was also suppressed. Antif is shifted about and the room thou

The undisputed and disputed facts surrounding the inci-[fol. 164] dent of July 20, 1961, which led to the convictions for rape were set forth in Giles v. State, supra (229 Md.). That case disclosed that on July 20, 1961, Joyce Roberts (the prosecutrix) and Stewart Foster were approached by three young colored males as they sat in an automobile in a secluded spot in Montgomery County. An argument ensued which resulted in the smashing of the automobile windows by the intruders and the unlocking of the doors of the vehicle. Stewart tried to ward off the attack but was knocked unconscious. Joyce got out of the vehicle and fled into the woods where, after a short distance, she tripped and fell. She hid in the underbrush but shortly thereafter was discovered by the three youths. She claimed that all three then had intercourse with her against her will and without her consent and that she put up little resistance because it appeared obvious to her it was futile to do so. John Giles claimed that after he found the prosecutrix she insisted he have intercourse with her but he declined. James Giles testified that the prosecutrix invited all three of them to have intercourse with her and that she specified the order in which they were to do so, and when his act was interrupted by lights from a police car all three fied the scene. Both of the files brothers testified that the prosecutive told them

she would have to say she had been raped if they wer caught in the woods because "the was on a year's probatical or "was in trouble." Subsequent to their arrest, the appullets gave statements to the police in which James admitted he had intercourse with the girl but John denied such an not remark the property of the extense to the remark and the

[fol. 165] Sometime after the affirmance of the rape convictions we had before us the appeal by the appellees from a denial of a motion for a new trial based on newly discovered evidence. The claimed newly discovered evidence primarily involved the testimony of Stewart Foster at the criminal trial and extrajudicial statements made by him to a girlfriend concerning the person or persons responsible. for provoking the attack on the automobile in which Poster and the prosecutrix were sitting prior to the rape. Based on the rule requiring motions for a new trial in criminal o cases to be made within three days after verdict we affirmed the denial of the motion. Subsequent to this the death sentences imposed on the appellees were commuted to life imprisonment. Thereafter relief was sought by the appellees under the P.C.P.A. which resulted in this appeal by the State from the granting of the relief sought.

At the hearing in the post conviction proceeding it was shown that about September 1961 a member of the Montgomery County Bar was appointed to represent the appellees as indigent defendants. He made an investigation of the case which included a discussion of the matter with the State's Attorney for Montgomery County and an examination of the prosecution's entire file, including the police report. While counsel for the appellees was prohibited from discussing the case with Joyce Roberts by her mother, he knew the facts surrounding the alleged consent of the prosecutrix from his discussions with the Gileses. Although he tried to examine the records of the juvenile courts in Mont-[fol. 166] gomery and Prince George's Counties, the attorney was not permitted to see those records. It qualify during the most pertinent evidence adduced at the past convict.

tion hearing involved an alleged micide attempt by the

2 procestrir and an alleged false rape claim. It was shown at our August 26, 1961, about five weeks after the rapes by the appelless and Joseph Johnson, the prosecutrix went to superty in Prince George's County and that when she entered a bathroom a boy followed her and had intercourse with her against her will. The extent of her resistance was to remove his hands from her body several times. Shortly thereafter another boy had intercourse with her in the yard of the premises where the party was being held which was against her will, but she offered no resistance to this act. On previous occasions the prosecutrix had had intercourse with one of the boys and would have consented to both acts on this occasion but for the fact the was fearful they would tell other boys at the party and they would all want to do the same thing. The following morning Joyce was admitted to the Prince George's General Hospital after having taken an overdose of bufferin tablets and sleeping pills in what was diagnosed as an attempted suicide. The above facts were brought out at the post conviction hearing by the testiment of Sat Wheeler of the Prince George's County police who interviewed the prosecutrix in the hospital on August 30, 1961, after he had received a complaint from Joyce's father that she had been raped at the party on August 26, 1961. Jorce Reberta was not called as a witness at the post conviction hearing error and distribution is remained with the learning [fol. 167] While the prosecutrix was in the hospital for having taken the overdose of nills she was visited by a boyfriend who asked her why she had taken the pills! She told him she had been raped and that this was her reason for

friend who saked her why she had taken the pills! She told him she had been raped and that this was her reason for taking the pills. Without Joyce's knowledge the boy informed her mother of the incident of August 26 as related to him by Joyce. The presidentrix! father then made a complaint of the alleged rape to Lt. Whalen of the Montgomery County police. The officer told Joyce's father to contact the Priese George's County police since the alleged rape had taken place in that county. Lt. Whalen made no investigation of the complaint not of the facts surrounding the overdoor of pills taken by Joyce of which he was also informed.

He was never affirmatively informed that J. tempted midde. Although Ltd Whatest on fact that Joyce's mother had at one time to psychiatrist, he did not have any information that Joy was mentally disturbed or montally till a high account pursuing any of the facts unrounding the institute of the gust 26th and the taking of the overdess, I pills, Lil White did not make any investigation into the character of the prosecutrix when he was investigating the rape complaint of July 20, 1961: decided an indespending out of a milegar topo

It was after being advised by Lt. Whalen to report the incident of August 26th to the Prince George's County police that Joyce's father made the complaint which resulted in Sgt. Wheeler's visit to the hospital. At the time of the interview Sgt. Wheeler did not know that Joyce was the complaining witness in a rape case in Montgomery County. After relating the incident that occurred at the party to [fol. 168] the police officer, Joyce informed him that the did not wish to make any complaint of rape and that she had not authorized any such complaint to be made. Based upon these statements and upon Joyce's assertion that the would refuse to testify if any such complaint was pursued. Sgt. Wheeler, with the consent of Joyce's father, marked the case feldsed and unfounded for that we to the transfer of the polysons

The State's Attorney for Montgomery County testified at the post conviction hearing that prior to the trial of the criminal case he knew Joyce Roberts had been hospitalized for taking excessive drugs and, although he had no direct information of any suicide attempt he suspected the drug incident might have been connected with the commence of July 20, 1961. The prosecutor had been informed of a rape charge in Prince George's County involving Joyce Roberts in which the charge was made by another, but he was also aware that the charge had been investigated and dropped. With respect to the overdose of sleeping pills as indi-

cating an attempted suicide by the proceentring the records of Prince George's General Hospital disclosed that Joyce Roberts was admitted on August 27, 1961, following the

taking of an everdose of bufferin tablets and sleeping pills a micide attempt, secondary to fladjustment reaction of adoleseence." The record showed that the prosecutrix was given an admitting diagnosis as a psychopathic personality, placed in the psychiatric ward, and discharged after nine days. The case history stated that "this present episode is result of parental arguing, incompatibility with parents. [fol. 169] and difficult adjustment." The attending physicina diagnosed the condition of the prosecutrix as an adoles; cent reaction. In the opinion of a psychiatrist the prosecutrix was mentally ill at the time of the attempted suicide since he considered an attempted suicide by a teenager as evidence of psychopathology, a mental disorder. He recognised, however, that many conditions, not derived from mental illness; could cause a suicide attempt and that the fact the prosecutrix may have been mentally ill on August 26, 1961, would not permit an opinion as to her mental condition at the date of the trial several months thereafter. Aside from the evidence hereinbefore set forth, several affidevits were filed at the post conviction hearing. These affidavits, executed by acquaintances of Joyce Roberts, in-

While the primary question before us concerns the suppression of evidence we shall first dispose of the two questions decided adversely to the appellees as to which they did not appeal; and the question relating to the taking of depositions in post conviction proceedings. The appellees contend they are entitled to have this Court consider the questions raised by them below as to the constitutionality of the Maryland Rule requiring motions for a new trial based on a newly discovered evidence to be filed within three days after verdict and the admission in evidence at the orininal trial of statements made by them when they were without sourced and not advised of their right to remain [fol. 170] silent. Notwithstanding the fact that these claims were overruled by the lower court and no gross appeal was taken therefrom, the appellees contend that they are entitled to have the judgment below affirmed fon these reasons

in addition to those assigned by the lower court. the question of whether a cross-appeal need by taken pears to be a novel one in a proceeding of this nature, cha related rulings have been made supporting the appe position. It has been held that an appellant is not entitle to the reversal of a judgment favorable to the app even though error was committed against the appellant below, where it appears from the record that a directed yerdiet in the appelles's favor should have been granted Such rulings are predicated upon the theory that no witimate prejudice is shown to the appellant if he could not recover in any event, even though he were granted a new trial. See Ragonese v. Hilferty, 231 Md. 520, 191 A.2d 422 (1963), and Texas Ca. v. Washington B. & A. B. Co., 147 Md. 167, 175, 127 Atl. 752 (1925). Assuming, without deciding, therefore, that the appellees are entitled to reassert the contentions raised below, they lack substance for the reasons hereafter stated of the discontinuous for the length of the leng

With respect to the constitutionality of Rule 567 a, requiring motions for a new trial to be filed within three days of the date of the verdict, as made applicable to criminal cases by Rule 759 a, this Court, in Giles v. State, supra (231 Md.), ruled that a motion for a new trial in respect to the subject trial, not having been filed within three days of the [fol. 171] werdict as required by Rule 567 a, was for that reason properly denied by the lower court. In so ruling, it is implicit that the rule itself was a valid and constitutional procedural requirement. Although the rules of procedure authorize a motion for a new trial, we recently noted that in the absence of state constitutional or statutory requirements, due process does not guarantee one the right to file a motion for a new trial after conviction for a criminal of fense. Brown v. State, 237 Md. 492, 498, 207 A.2d 103 (1965). There is no merit to the appellees attack on the three day rule with attribut otherwise anothe forman in the pro-

There is likewise no merit to the contention of the appellees that they had been devied their right to counsel by the admission of statements made when they were not repre-

ented by counsel and not affirmatively advised of their ht to remain allent in wiolation of their right to due protoss. This same contention was raised in the recent case of Cospess to State, 238 Md. 433, 209 A.2d 552 (1965); wherein we stated that we did not interpret the Supreme Court decisions in Gideon v. Wainwright, 372 U.S. 835 (1963), Massiah , United States, 377 Uss. 2014 (1964) and Escobedo w. Illinois, 878 U.S. 478 (1964), "as making an offirmative advising of an arrestee of his right to counsel, before the taking of a confession, a prerequisite to its admissibility (in a State prosecution) provided, of course, that the confession was freely and voluntarily given under the totality of the attendant circumstances, or that a failure to inform, explicitly, an arrestee of his right to remain silent' [10] 172] destroys the voluntariness of his confession and thereby readers it ine missible." In adhering to this position, we hold that the lower court correctly refused to grant relief on the claim that the admission of statements made to the police was a violation of due process. artifarting atti Wall

With respect to the authority of the appellees to take depositions in a proceeding of this nature, the lower court found that proceedings under the P.C.P.A. are civil in nature and that the rules relating to civil proceedings are applicable to them. The rules governing post conviction procedure are to be found in Rules BK40 through BK48 in Chapter 1100 titled "Special Proceedings" and not under Chapter 700 dealing with procedure in "Criminal Causes." And Bule 1000 titled "Special Proceedings General Rules Applicable" provides that "the preceding Rules, Chapters 1, 100 to 600 inclusive and 800 are applicable to Special Procoplings dealt with in Chapter 1100, except insofar as the Rules dentained in Chapter 1100 otherwise provide expressly or by necessary implication." Regardless therefore of whether the rules governing post conviction proceedings are civil in nature, there seems to be little doubt, since Rule 1000; providing that Chapter 400 (Depositions and Discovery) is applicable to Chapter 11000 (Special Proceedings); distinguished on serious and a contract of serious of the contract of the cont that the authorization to take depositions in post conviction proceedings was proper, and we so holder subject to the

The principal question involved in the case at bar relates to the failure of the prosecution to turn over to the defense prior to the trial of the criminal case information it had pertaining to the alleged rape complaint arising out of the [fol. 173] incident of August 26, 1961, and the attempted suicide. The court below found that this information could reasonably be considered admissible and useful to the defense and therefore the failure of the prosecution to disclose it, even though it may not have been withheld for an improper motive, amounted to a suppression of evidence in violation of the rights of the appellees to due process of law.

It is clear that the suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process and is ground for relief under the P.C.P.A. Brady v. State, 226 Md. 422, 174 A.2d 167 (1961), aff'd. 873 U.S. 83 (1963); Strosnider v. Warden, 228 Md. 663, 180 A.2d 854 (1962). The appellees contend that for the purpose of determining the applicability of the suppression rule, evidence is material if it could reasonably have been considered admissible and useful to the defense regardless of whether it is technically admissible and useful in the sense that it contradicts trial evidence. The appellees rely on Griffin v. United States, 183 F.2d 990 (D.C. Cir. 1950), and Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964). and further contend that if the Griffin admissible and useful test is met the withholding of evidence amounts to a demai of due precess if the State had knowledge of the evidence and the defense did not.

While we agree that evidence which is claimed to have been suppressed must be reasonably considered to be admissible and useful before suppression may be said to exist, [fold 174] this is not the sole test in determining when a suppression of evidence can be said to amount to a demail of due process. Not only must the evidence withheld be admissible and useful, but it must be such, if it had been

offered in evidence, as would be capable of clearing or tending to clear the accused of guilt- i.e., it must be exculpatory? For a definition of ffexculpatory? see Dean v. State, 381 P.2d 178 (Okt. 1963).

Although the Circuit Court of Appeals in Griffin v. United States, supra, recognized the necessity of the prosecution disclosing evidence that "may reasonably be considered admissible and useful to the defense" under the facts of that case, it is clear that the undisclosed evidence, which concerned threats of the victim toward the person accused of murder, was obviously material and exculpatory evidence to which a jury would attach significance. Likewise, in Barbee w. Warden, supra, which followed the reasonably admissible and useful language of Griffin, the evidence suppressed, which was a police department ballistics report to the effect that the gun found in the defendant's car and described by witnesses as similar to the one carried by him at the time of the shooting was not the gun used in the shooting, the nondisclosure was properly held to be a denial of due process in that the evidence was material and exculpatory to the accused. For holdings that the evidence suppressed must be material to the guilt or innocence of the accused or to the penalty to be imposed in order to constitute a denial of due process, see State v. Morris, 365 P.2d 668 (N.M. 1961) and Brady v. Maryland, 373 U.S. 83 [fol. 175] (1963). In Brady, where the accused made a request for evidence that had not been disclosed, the Supreme Court held that the suppression of evidence by the prosecution favorable to an accused was violative of due process where the evidence was material either to guilt or to punish and the defense did not (half set after 1 the band be such and bun

We think that in order for the nondisclosure of evidence to amount to a denial of the process it must be such as is material and capable of clearing or tending to clear the accused of quilt or of substantially affecting the punishment to be imposed in addition to being such as could rescuedly be considered admissible and useful to the defense. And as pointed ont in Barber, in a situation involving passes

sive nondisclosure an inquiry must be made into the question of whether the nondisclosure may have operated to the projudice of the accused. Certainly there should be no duty on the prosecution to disclose evidence that is available to the accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused or lacking in probative value, or, in some discussional accused accused that is merely circumstantial. See Jordon v. Bondy, 114 F.2d 599 (D.C. Cir. 1940) and Butt v. Graham, 307 P.2d 892 (Utsh 1957). See also Brady v. Maryland, supra, and 60 Colum. L. Rev. 858. The defense may be as well able to explore outside sources of information as the prosecution. United States v. Laurenson, 298 F.2d 880 (4th Cir. 1962).

In order to decide what evidence can be said to have been suppressed it is first necessary to determine what the pross ecution was charged with knowing. As was pointed out in Barbee, at p. 846, "the police are also part of the prosecu-[fol. 176] tion, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure." It would not be unreasonable therefore to charge the prosecutor and his agents who have the duty of preparing and presenting the case, with knowledge of all seemingly pertinent facts related to the charge which are known to the police department who represent the local subdivision that has jurisdiction to try the case. Under this rule the State's Attorney for Montgomery County should be charged with knowledge of those facts known to the police department of that county. Thus all knowledge of La. Whalen pertaining to the prosecutrix would be chargeable to the State's Attorney. To go further would impose a practically impossible and unworkable burden on local autherities remain in open del L. menthin ables a distribute the

Applying the criteria above set forth to the facts of the case at bar, the strongest reasonable inference which the prosecution could conclude from the information known to it when considered in connection with other evidence in the case, would appear to be: that Joyce Roberts had probably been involved in some sexual activities with boys on the evening of August 26th under circumstances not amount.

ing to criminal rape, on which her father preferred rape charges; but which investigation showed were groundless; that on the same evening she had intentionally taken an overdose of alceping pills in an attempt to commit suicide and as a result had been admitted to a hospital; and that for reasons known only to her mother, the mother had taken her daughter to a psychiatrist.

As we see it, the prosecution should disclose to the defense such information as it has that may reasonably be considered admissible and useful to the defense in the sense [fol 177] that it is probably material and exculpatory, and where there is doubt as to what is admissible and useful for that purpose, the trial court should decide whether or not a duty to disclose exists. Assuming that there was reason for doubt on the part of the prosecution in this case as to whether the evidence known to it was reasonably admissible and useful as tending to affect guilt or punishment and that there was therefore a duty to disclose it; we think the failure of the prosecution to disclose the information relating to the alleged rape of August 26th and the subsequent suicidal attempt was not prejudicial to the appellees and did not therefore warrant the granting of a new trial on the basis of the denial of due process. We shall first consider the attempted spicide, which the lower court found to be evidence of mental derangement and admissible for the purpose of impeaching the credibility of the prosecutrix in sind the rimide tadi in the suspense of the

The attempted suicide is said to be admissible and useful for purposes of showing that the prosecutive was mentally incompetent as a witness and for purposes of impeaching her credibility as a witness. The record, however, does not disclose any medical or other competent evidence to establish or even indicate that if the attempted suicide on August 26, 1961, had been known to the defense, together with all other facts and circumstances shown by the record, that such information could collectively constitute a legally sufficient basis upon which an opinion could be predicated that the presecutive was mentally incompetent as a

witness on the date of the trial in December 1961, or that her testimony was not to be believed. Although the paychiatrist called by the appelless at the hearing below tes-[fol. 178] tified that an attempted suicide by a teenager was in his opinion evidence of mental illness, he stated that an attempted suicide on August 26, 1961, would not permit an opinion as to the mental condition of the prosecutrix at the date of the trial As the testimony of the psychiatrist disclosed, an attempted suicide may result from causes not connected with mental illness. The State's Attorney for Montgomery County, when he first heard of the attempted suicide, believed it may have been related to the incident of July 20, 1961. Certainly it would not be unreasonable for a jury to conclude that an attempted suicide by a teenage girl was indicative of emotional disturbance caused by an attack upon her by three young colored males. Based on the evidence relating to the attempted suicide that was claimed to have been suppressed there is nothing to indicate that the suicide attempt was material to the competency of the prosecutrix as a witness at the criminal trial or to the question of consent. Neither the case of State v. Poolos. 85 S.E.2d 342 (N.C. 1955), nor Powell v. Wiman, 287 F.2d 275 (5th Cir. 1961), relied on by the appellees are persnasive on this point. The former case was one in which a question saked a witness for the state as to a prior attempt to commit suicide was said to be proper for purposes of · impeachment. In the latter case, the prosecution knowingly suppressed evidence of the insunity of a witness and of a statement made by him to the police in contradiction of his testimony at the trial. Even if evidence in the case at bar as to the attempted suicide were admissible we do neghthink [fol. 179] it would be material to the guilt of the appellees or the punishment to be imposed in light of the facts surrounding the attempted suicide which clearly showed that it was an outgrowth of an incident totally unrelated to the one for which the appelless were convicted of rape. Insamuch as this evidence in no way showed the prosecutric was mentally incompetent as a witness, or would have been

in contradiction of any of the testimony given by her at the priminal trial, we find that its probative value was such as not to have been material to the credibility of the proscutrir and therefore the failure of the prosecution to disclose such information did not amount to a denial of due procession.

procession below 1991 at terrain no shining belowath an With respect to both the attempted suicide and the alleged false rape claim, it is important to note that we have held that specific acts of misconduct are not admissible to affect the credibility of a witness, for credibility must ordinarily be attacked by evidence of general reput tation for truth or veracity or material contradictory facts. Bon v. State, 133 Md. 613, 105 Atl. 867 (1919) (Shartzer v. State, 63 Md. 149 (1885). With respect to the alleged rape claim as evidence of the prosecutrix general reputation for nuchastity, the court below found that the appelleen knew of the unchastity of the prosecutric prior to the trial of the oriminal case. Where consent is at issue, apecific acts of intercourse with others prior to the alleged rape are not admissible to establish lack of chastity. But evidence of general reputation for unchastity is admissible. Sen Giles v. State, 229 Md. 870, 183 A.2d 359 (1962); Humphreys v. State, 227 Md. 115, 175 A.2d 777 (1961); [fol. 180] Shartzer v. State, supra. By the Gileses version of the incident of July 20, 1961; as related to their attorney. the defence certainly had some question as to the character of the prosecutrix which properly could have been investigated. In view of this and as evidenced by the mination of witnesses at the criminal trial, the defense must have known of the prosecutrix! general reputation for anchastity and that she was a sexually promisenous girl It is difficult therefore to see how evidence of the lighted rape claim would have added anything of con-The court below, in relying on Smallwood vil Warden

The court below, in relying on Bosqueood vi Worden. 205 F. Supp. 225 (D. Md. 1962); was of the opinion that inted tourishingwood granting a an intelligation registration some

this rapid claim was additionable for purposes of impeach-beauty but in that there schotes the quantities was specific of addi-quacy left sounsel, the probabilism willby the cake at bury had knowledge of the distory, physical condition as a repu-tation will the probabiling witness allow which was said to have likely affected the result of the trials. While evil de selof a rape claim may be relevant when the basis for the claims is glearly lacking the record here shows that the prosecutric did not make a complaint and that she cannot therefore be said to have made a false rape claim There was in this case no evidence from which so jury omid have concluded that since a false rape claim was intentionally made by the prosecutrix on one occasion it raised considerable doubt as to the validity of the claim made against the appelless. However the incident of An [fol 181] gust 26th may be interpreted it permits of no conclination that the prosecutrix made a false cape claim. The claim was made by her father after statements made by the prosecutrix to a boyfillend were communicated to him. While Joyce freely discussed the incident with Sgi Wheeler she denied that any rape had occurred. Thus the only possible ase of the facts surrounding the alleged rape claim would be for purposes of showing the unchastity of the prosecutrix, a fact that was already known to the defense at the time of the rape trial.

The appellees, however, argue that the subsequent rape claim goes to credibility and is material to the mental illness of the prosecutrix. It is their contention that endence of her sexual promiscuity and of the alleged rape claim shows she is afflicted with nymphomania—a type of mental illness. While evidence of nymphomania was held admissible in People v. Bastian, 47 N.W.2d 692 (Mich. 1951), to conclude that such an illness existed in the case at bar would be to engage in sheer speculation and conjecture. What the appellees would have us do is to take the facts presented at the post conviction hearing and to draw conclusions therefrom that are not supported by the record-liven if the prosecutrix can be said to have been suffering

from nymphomenia, there is nothing to show that this made her incompetent as a witness on that she consented to the acts for which the appelless were convicted.

Although the new trial was granted by the court below solely on the suppression of evidence relating to the alleged [fol. 182] suicide attempt and alleged rape claim, both of which arose out of the incident of August 26th, the appellees also claim that evidence was suppressed as to the near probation status of the prosecutrix and as to the fact that her mother had taken her to see a psychiatrist. Without prolonging an already lengthy opinion in this case which the appellees seek to retry on an appeal by the States it will suffice to say that there is nothing in the record to show a withholding of evidence with respect to either of these matters.

We hold that the evidence held by the lower court to have been suppressed was neither material to the guilt of the appellees or to the punishment to be imposed, nor was the failure to disclose prejudicial to the accused. The non-disclosure, therefore, cannot be said to have amounted to a debial of due process and some tree hold better in the second of

Order Reversed; the Appellees to Pay the Costs, von 2500

the present of the time of the rape trial via the raperial of to determ at the time of the rape trial via the repetion of the appelies, attending and a material to the respective appelies and the absence of the contribution of the respective and at the respective within trial of the respectation of the re

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Hammond, Horney, Marbury, Sybert, Oppenheimer, Barnes, Carter, J. De Weese (specially assigned), JJ.

DISSENTING OPINION BY OFFERHINGS, J. IN WHICH HAMMOND, J. CONCURS-Filed July 13, 1965.

[fol. 184] Oppenheimer, J. files the following dissenting opinion in which Hammond, Jaconeuris estaularing a asse of

The evidence admittedly withheld by the State, in opinion, could have been of vital importance to the defen of the accused and its withholding constituted a violation of due process of law.

The appellees' defense to the charge of rape was that their assault upon the white companion of the prosecutry was provoked by his obscene racial remarks and that the prosecutrix not only consented to intercourse with two of the appellees but suggested it and invited it. The appellees testified that the prosecutrix, prior to any acts of intercourse, had said to them that she had already had sexual

1 In Office v. State, 229 Md. 870, 187 A 2d 359 (1962) in affirming the appelleer convictions on appeal, we referred to the condicting evidence as in consent. The complete transmipt of the sestiment as the trial was introduced in the hearing under the Post Conviction Procedure Act as a result of which Judge Moorman granted a new trial. The entire testimony at the criminal trial is therefore before us on this appeal. [fol 185] intercourse with sixteen or seventeen boys that week and two or three more wouldn't make any difference. The appellees also testified that the prosecutrix, while consenting to intercourse, said that she was on probation and if caught by the police would have to claim that she was raped. This testimony was denied by the prosecutrix at the trial and obviously was not believed by the triers

of fact who convicted the appellees.

The essential facts established at the post conviction hearing are not in dispute. Detective Lieutenant Whalen of the Montromery County Police Department, prior to the trial of the appellees had received a can from the family of the prosecutrix stating that she fied been raped by two men in August of 1961, which was about five weeks after the acts for which the appellees were to be tried. The lientenant had also received information that the prosecutive had taken a number of alceping pills and had been taken to the hospital: He had previously known that at one time the mother of the prosecutive had taken her to see a psychiatrist upon receipt of the call as to the alleged rape, Lieutenant. Whalen told the prosecutrix's father to get in which with the Prince George's County Police, since the alleged rape had taken place in that county. The State's Attorney for Montgomery County [fol. 186] had also been informed before the trial of the appellees that a complaint had been made in Prince George's County that the prosecutrix had been raped by other persons after the acts for which the appellees had been charged and he was aware that the subsequent charge had been investigated and dropped. The State's Attorney had also been informed that the prosecutrix had been hos-pitalized for taking an overdose of drugs and assumed that she had done so in entionally. None of this infor-mation known by the police lientenant and the State's Attorney was communicated to the court appointed coursel of the appelless prior to their trial and their coursel had no knowledge thereof.

us on this appeal.

forammort.

In Brady w State, 226 Md 422, 174 And 167 (1961), we held that the suppression or withholding by the State of material excelpatory to an accused is a violation of disprocess even if, as here, the withholding is not the result of guile. In that case, the State contended that the evidence withheld, which was an extra judicial confession or admission by a third party that he had committed the offense for which the defendant was tried, was not admissible. In delivering the opinion for the Court, Chief Judge Brune considered the authorities pro and con as to whether or not such a confession was admissible. Without coming to any conclusion as to its admissibility, Judge [fol. 187] Brune said, for the Court:

We think that Boblit's undisclosed confession might have been usable under any of the three rules stated in Thomas, which we have quoted above, and hence could not be regarded as inadmissible and unusable in any manner in Brady's defense."

Judge Brune's opinion goes on to say:

There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Bradmas being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting ... We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. To apply the words of the Supreme Court of the United States in Griffin v. United States, 336 U. S. 704 at 708-709, quoted by the Court of Appeals of the District of Columbia Circuit in its opinion on remand of the case, above cited (183 F. 2d at 992), it seems to us (as it did to the Coast of Appeals of the District in Griffia) that it would be 'too

dogmatic for us to say that the jury would not have attached any significance to this evidence in consider-

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady." 226 Md. at 429-30.

In the words of the Court of Appeals in Griffin v. United States, "when there is substantial room for doubt, the prosecution is not to decide for the court what is admissible or for the defense what is useful."

[fol. 188] In this case, the information withheld by the prosecution, in my opinion, would have been admissible, in whole or in part, on cross examination of the prosecutrix and was clearly usable in the defense of the appellees. The lodging of a complaint of rape on behalf of the prosecutrix, and the subsequent withdrawal of the complaint took place between the alleged offenses of the appellees and their trial. These facts could well have been used to support the claim of the appellees that the prosecutrix consented to intercourse with them and thereafter, as they said she had told them she might do, made an unjustified claim that she had been raped.

The withheld evidence of her attempted suicide might well have been used by counsel for the appelless to attack the credibility of the prosecutrix because of mental or emotional illness. While I have not been able to find a Maryland case deciding whether or not testimony of mental illness or emotional disturbance not amounting to insanity is admissible for the purpose of discrediting the prosecutrix in a sex case, there is authority elsewhere holding such evidence to be admissible. The suppressed information might also have been used by the appelless in an

Tabursky v. State, 142 Conn. 619, 116 A.2d 433 (1955). See also United States v. Hiss. (D.C.S.D.N.Y. 1950), 88 F. Supp. 559. Contract v. Alabamie, 268 Als. 299, 108 So.2d 541 (1958).

[fol. 189] endeavor to show that the prosecutric was a nymphomaniacle with the prosecutric was a

As in Brady, the test is not whether the evidence clearly would have been admissible but whether it must be regarded as inadmissible and unusable in any manner in defense of the appellees. The question of actual admis [fol. 190] sibility, particularly in a case such as this can only be passed upon in the context of actual cross examination and proffered testimony. Such cross examination and additional testimony might well have been admissible and, if admissible, were usable in the defense of the appellees. That is clearly sufficient.

The epinion of the majority holds that the information withheld by the State was not material evidence exculpatory to the appellees. With all deference, it seems to me that my brethren are arguing the weight of the evidence and put themselves in the place of the triers of the facts. While counsel for the appellees knew of prior acts of unchastity of the prosecutrix, the additional withheld

In People v. Bastian, 830 Mich. 457 (1951), it was held that on a trial for statutory rape the trial court was in error in sustaining an objection to a line of cross-examination which counsel for the defendant said would tend to establish that the prosecutrix was a sexual psychopath. The Supreme Court of Michigan held that the professed testimony was relevant to the credibility of the prosecutrix, particularly if sufficient to indicate that she was a nymphomaniac. People v. Cowies, 246 Mich. 429, 224 N.W. 387 (1929) is to the same effect.

[&]quot;Occasionally is found in women complainants, testifyings to sex-offences by men, a dangerous form of abnormal mentality,—dangerous here, because it affects testimonial trustworthiness while not affecting other mental operations. It consists in a disposition to fabricate irresponsibly charges of sex-offences against persons totally innocent. The genesis and operations of this quality are sufficiently shown in the passages quoted onte, § 924a (character for chastity). Sometimes it is associated with unchaste conduct in the witness, sometimes not. But its nature is well known to psychiatrists and is recognisable by them. Testimony to its existence in an individual should always be receivable." Wigmore on Evidence, § 984a (3rd ed. 1940).

evidence might have made possible a far more effective cross examination than mere knowledge of prior acts of unchastity of itself permitted as a decision where a

What has been said pertains only to the actual information known to and withheld by the State's Attorney and Lieutenant Whelen However, this information, important as it was of itself to the defense was also usable as the basis for further investigation. Although the prosecution did not choose to investigate further the information which had been received, if that information had been made available to the appellees connsel it would have been a short and logical step for him to pursue what had happened in [fol. 191] Prince George's County after the claim of the alleged rape had been made and after the prosecutrix had been hospitalized there: He could have ensity ascertained the additional facts adduced at the post conviction hearing. These facts included the statements of the prosecutrix to Detective Sergeant, Wheeler of the Prince George's County Police that during the preceding two years she had had numerous acts of sexual intercourse with a large number of boys and men, many of whom were unknown to her, and that she had accused two men in the Prince George's County incident of rape to explain why she took the overdose of pills, although she also told Wheeler that she would refuse to testify against the two men if they were charged with rape. The hospital record of Prince George's General Hospital showed the diagnosis of attempted suicide by the prosecutrix and the admitting diagnosis of psychopathic personality. An interview with Dr. Connor, who testified in the post conviction hearing, would have readily shown that the prosecutrix had been confined in the hospital's psychiatric ward for nine days. of this quiplies are sufficiently shows in the equiplies entried on the continue of the second

Testimony that a witness has been confined in a mental hospital has been hold admissible on the issue of credibility. Walley v. State, 240 Mins. 136, 126 Sc.2d 534 (1961); People v. Kirkes (Cal. Dist. Ct. App. 1960) 243 P.2d 816.

[fol. 192] This additional information would have mate rially strengthened the usable lines of defense inherent in the information actually withheld by the prosecution. It seems clear to me that the facts which the State knew and did not communicate would have been helpful to counsel for the appellees in pursuing the new important lines of inquiry obviously indicated. The State cannot claim the withheld information was unusable by the defense because the prosecution chose to know no more.

The Brady and Griffin rule rests on basic principles of fairness. If information is withheld by the prosecution and if that information, although not pursued by the prosecution, of itself would have reasonably led to the procuring of information usable in any manner in the defense of the accused, that fact of itself should make the withholding of the uncommunicated matters the basis for a new trial. We are dealing here with capital charges. The appellees were represented by court appointed counsel who, however able and conscientious, could not have the facilities of investigation available to the State. The information withheld would have made the procuring of the further, and possibly vital, information easily obtainable.

The issue before us is not the guilt or the innocence of the appellees but whether, under all the circumstances, the withholding of the information by the State constituted a violation of due process. In my judgment, it clearly did. " I would affirm the order of Judge Moorman granting a

new trial.

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ORDER ALLOWING CERTIORARI Filed March 21, 1966

The petition herein for a writ of certiorari to the Court of Appeals of the State of Maryland is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in respense to such writ: hat be and dog bloom supplies non bus iniditative molecule and the Antal Take indonestions withinini nould have made the procuring exchinatantiating and doorto her, and that indemnited extists (nothernoof), their relative Chesan today and the adding office as an enterior and an enterior of the the appellant but whether antien all the birdamstaness the withholding of the information by that State constituted assiolation of due processed Lardy, judge Aute ib receip dide in manifesting the manifestile and and senite throw I telepted spicale by the protectorix and the admiralant wen nosis of psycholating personality an interview with fac-Commer, who tentified to the past converges more a granted have readily shows that the prosecutric has loss confined in the basquel's psychiatric ward for nine days. ..

^{1/} Textlement that a witness has been confined in a means, hospital has been held admissible on the leaves of credibility. Walter v. State 240 Miss. 136, 128 Societ 534 (1961). Panels v. Mickel (Cal. Dig. Ch. App. 1962) 243 P.26 816.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

JAMES V. GILES and JOHN G. GILES,

Petitioners.

V.

STATE OF MARYLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

James V. Giles and John G. Giles petition for a writ of certiorari to review a judgment of the Court of Appeals of Maryland which reversed a judgment of the Circuit Court for Montgomery County, Maryland, ordering in a post-conviction proceeding that petitioners be granted a new trial following convictions for rape.

OPINION BELOW

The opinion of the Court of Appeals of Maryland (R. 231-62; Appendix B, bijva) is reported at 239 Md. 458, 212 A.2d 101.

JURISDICTION

The judgment of the Court of Appeals of Maryland (Appendix B, infra) was entered and filed on July 13, 1965 (R. 231, 252). The jurisdiction of this Court is conferred by 28 U.S. Code § 1257(3), petitioners claiming rights, privileges and immunities under the Constitution of the United States, as more particularly set forth hereafter.

QUESTIONS PRESENTED

- 1. Whether petitioners were convicted in violation of the due process clause of the Fourteenth Amendment to the United States Constitution by reason of the State's suppression of material exculpatory evidence.
- 2. Whether, in holding that petitioners were not denied due process by State suppression of exculpatory evidence, the Court of Appeals of Maryland applied erroneous principles with respect to three elements of the suppression doctrine materiality, prosecution knowledge, and absence of defense knowledge.
- 3. Whether, in view of Maryland's unique doctrine that the jury is the judge of the law, the Court of Appeals denied petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment by denying relief on the ground that certain of the suppressed evidence, though it concededly "could reasonably be considered admissible and useful to the defense," did not have sufficient exculpatory value.
- 4. Whether petitioners were denied their right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments, by the receipt at their criminal trial of evidence of admissions made by them (a) under police interrogation while they were under arrest and prime suspects, (b) without warning of their right to remain silent, (c) while they were without counsel, and (d) when they were indigent, but (e) prior to their having requested counsel.

5. Whether petitioners were deprived of due process of law by application of the Maryland rule that new trial motions based on newly discovered evidence must be filed within three days after verdict.

STATUTES AND RULES INVOLVED

The pertinent provisions appear in Appendix A, infra.

STATEMENT OF THE CASE

The judgment sought to be reviewed is the culmination of a proceeding brought under Maryland's statutory substitute for habeas corpus, the Post Conviction Procedure Act, Md. Code (1957), Cum. Supp. (1964), Art. 27, \$ 654A; infra, Appendix A. Petitioners were convicted of rape in the Circuit Court for Montgomery County, Maryland. After exhausting all appeals, and after commutation of their death sentences to life imprisonment, petitioners filed a petition under that Act alleging that their convictions had been unconstitutionally procured. (R. 8-14.) Following an evidentiary hearing, the Circuit Court for Montgomery County ordered a new trial on the ground that petitioners had been denied due process of law under the Fourteenth Amendment by reason of the State's suppression at their criminal trial of material exculpatory evidence (R. 164). The Court of Appeals of Maryland, sitting en banc, reversed, two judges dissenting (R. 231-62).

A. THE CRIMINAL PROCEEDINGS.

Petitioners are brothers, aged 20 and 22, respectively, at the time of trial in December 1961 (Ex. 1, pp. 134, 163). Because of their indigency petitioners were represented at the criminal trial by court-appointed counsel

The transcript of the criminal trial was admitted in the postconviction hearing as Petitioners Exhibit 1 (R. 39). It is contained in the original record filed with the certified record pursuant to Rule 21(3). The transcript is here cited Ex. 1.

(R. 235). Petitioners are Negroes. The alleged victim was a 16-year-old white girl. The jury was all white. (R. 217, 232, 234; Ex. 1, pp. 1-2.) Petitioners' defense was that the girl had solicited sexual intercourse (R. 155-56).

The evidence at the criminal trial may be summarized as follows:

On the night of July 20, 1961, Joyce Roberts, aged 16, accompanied by three men, drove by automobile into woods along the Patuxent River in Montgomery County, Maryland The car ran out of gas, and two of the men left, leaving Joyce and Stewart Foster in the parked car. (R. 217-18.)

James Giles, John Giles, Joseph Johnson and John Bowie had been fishing and swimming in the river. Bowie's car, parked at the river, was guided by them past Foster's car, and Bowie drove off. (Ex. 1, pp. 24-29, 33, 58-59, 135-37.) One of the Giles brothers or Johnson asked Foster for a cigarette (R. 89; Ex. 1, pp. 137, 166). An altercation ensued. Foster and Joyce Roberts testified that the three young Negroes demanded his money and the girl (Ex. 1, pp. 34, 59). The Giles brothers testified that the altercation had been provoked by Foster's calling them obscene racist names (Ex. 1, pp. 137-38, 166, 180, 182).

² Maryland has two statutory "ages of consent" — 14 for the purposes of a felony prosecution, 16 for a misdemeanor. Md. Code (1967) Art. 27, 44 462, 464. Sexual intercourse with the prosecutrix was admitted by James Giles and denied by John Giles (R. 234).

Johnson did not testify at petitioners' trial. He was also indicted for rape, but his case was severed and transferred to Anne Arundel County. Johnson was convicted and sentenced to death, which scatence was commuted by the Governor to life imprisonment. A post-conviction petition filed for Johnson is being held in abeyance pending disposition of the present case.

James Giles and Johnson threw rocks or stones at the car (Ex. 1, pp. 59-60, 138-39). Joyce Roberts left the car and ran into the woods for a distance of thirty feet, where, she testified, she stopped because she fell and was out of breath (R. 218-19). Foster left the car, was knocked down by Johnson, and ran off to the nearest home where an occupant called the police (Ex. 1, pp. 35, 61-62).

While the altercation was still going on at the car, John Giles took a trail into the woods and came upon Joyce Roberts. They stayed together and conversed for about ten minutes. (Ex. 1, pp. 139, 151; R. 219, 221.) According to both Joyce (R. 221) and John Giles (Ex. 1, p. 139), she offered to have sexual intercourse with him if he helped her get away. John Giles testified (Ex. 1, pp. 139, 151), and Joyce denied (Ex. 1, pp. 84-85), that she also told him that she was on probation and didn't want to get into trouble.

James Giles and Johnson left the car, entered the woods, and came upon Joyce and John Giles (Ex. 1, pp. 168-69). According to the Giles brothers (Ex. 1, pp. 140, 155, 169), but contrary to Joyce's testimony (Ex. 1, p. 62), Joyce called to James Giles and Johnson when they approached.

According to Joyce's testimony, the three men "leaned around" and were kissing her. "One of the boys reached for the zipper in my shorts and I said 'No' and one of them said 'Either you do it or we will do it' and so I said 'I will' and I took my shorts and underpants off." The three men then had sexual intercourse with her. Joyce did not call out or resist, nor did she make any protests against having intercourse. She had the intercourse because she was afraid. (R. 219-21; Ex./1, pp. 63-64, 87.)

According to the testimony of the Giles brothers, Joyce invited them and Johnson to have intercourse with her. She removed her clothes entirely on her own voltton. She was not threatened or held. She directed the order

in which the men should have intercourse with her., She told them that she had had sexual intercourse with 16 or 17 boys that week and two or three more wouldn't make any difference. She also said that she was in trouble and couldn't afford to be caught with them and that if she were caught in the woods she would have to say she was raped. James Giles and Johnson had intercourse with her. John Giles did not. (Ex. 1, pp. 140-41, 152, 156, 169-70, 172-74, 192-96.)

On redirect examination by the State, Joyce testified that she had not been on probation at the time of the episode (R. 222). On cross-examination of the Giles brothers, the prosecutors ridiculed the defense testimony that Joyce had said she was on probation (R. 223-25).

A physician who examined Joyce Roberts immediately after the episode testified to finding evidence of sexual intercourse. He gave no testimony indicating forcible penetration. (R. 216-17.)

The State also introduced evidence of certain statements made by petitioners to the police following their arrest. These statements and the circumstances under which they were given are discussed infra, pp. 12-13.

The jury returned a verdict of guilty against each petitioner on December 5, 1961. On December 11, 1961, the trial court (Judge James H. Pugh) sentenced petitioners to death. (R. 8.)

The convictions were affirmed by the Maryland Court of Appeals, Giles v. State, 229 Md. 370, 183 A.2d 359, and an appeal to this Court was dismissed for want of a substantial federal question. Giles v. Maryland, 372 U.S. 767.

On November 16, 1962, petitioners moved in the trial court for a new trial on grounds of newly-discovered evidence. The motion was denied, and the denial was affirmed by the Court of Appeals on May 6, 1963, on the ground that the Maryland Rules require such a motion to

be filed within three days after verdict. Giles v. State. 231 Md. 387, 190 A.2d 827. (R. 10.) On October 24, 1963, Governor J. Millard Tawes commuted petitioners' sentences to life imprisonment (R. 8).

B. THE POST-CONVICTION PROCEEDING.

On May 11, 1964, petitioners filed in the trial court a: petition seeking to set aside their convictions under the Post Conviction Procedure Act (R. 8-33). The petition alleged that their convictions had been procured in violation of the United States Constitution in several respects, of which the following claims survive: (a) that the State had suppressed material exculpatory evidence in violation of the due process clause of the Fourteenth Amendment; (b) that petitioners were denied due process because the Maryland rule requiring that new trial motions based on newly-discovered evidence be filed within three days after verdict unreasonably prevented petitioners from proving their innocence by such evidence (R. 8). At the post conviction hearing, the trial court allowed the petition to be amended to include an additional ground: that petitioners had been denied their right to the assist-ance of counsel guaranteed by the Sixth and Fourteenth Amendments by the receipt at the criminal trial of evidence of admissions made by them to the police while they were under arrest and prime suspects, without counsel, and unwarned of their right to remain stlent (R. 89-90).

On November 10, 1964, the trial court (Jadge Walter H. Moorman) found that petitioners had been denied due process under the Fourteenth Amendment by reason of the State's suppression of evidence and ordered that petitioners be accorded a new trial (R. 164). The other claims made by petitioners were denied (R. 159-60). On appeal by the State, the Court of Appeals of Maryland, two judges dissenting, reversed, holding that there had not been an unconstitutional suppression of evidence and agreeing with the rulings of the trial court that were adverse to petitioners (R. 231-62).

. The claimed suppression of evidence.

The evidence claimed to be suppressed falls into two categories: (1) certain incidents which occurred between the date of the alleged rape (July 20, 1961) and the beginning of petitioners' criminal trial (December 4, 1961), and (2) what we call Joyce Roberts' "near-probation status." We next set forth separately the evidence adduced at the post-conviction proceeding relevant to each category.

The incidents following the alleged rape. On the night of August 26, 1961, Joyce Roberts attended a party in Edmonston, Prince George's County, Maryland. There she had sexual intercourse with one man in the bathroom and with another in the yard outside the house. (R. 30-32, 65-68, 236.)

In the early morning of August 27, 1961, Joyce took a large overdose of pills, She was placed in the psychiatric ward of Prince George's General Hospital for ten days, the hospital record showing a diagnosis of attempted suicide and psycopathic personality and that her chief complaint was "Don't want to live." (R. 226-27, 31, 43, 49-50, 98-99, 157-58, 236, 238.)

While in the hospital, Joyce was visited by a friend, Robert Bostic. Joyce told him that she had taken the overdose of pills because she had been raped at the August 26 party by the two men with whom she had had intercourse that night. Bostic relayed this information to Joyce's mother, and a formal complaint of rape against the two men was lodged with the police by Joyce's father. (R. 31-32, 60, 65-73, 237.)

As a result of the complaint, Detective Sergeant Wheeler, of the Prince George's County police, visited Joyce Roberts on September 1, 1961, in the psychiatric ward of the hospital. Joyce first told Wheeler that the two men at the party had had sexual relations with her against her will. When Wheeler questioned her further,

she admitted that she had offered only token resistance to the first man - merely removing his hands from her body several times - and no resistance at all to the other man, and that no threats had been made to her. She told Wheeler that she had been reluctant at that time to have intercourse with the two men only because she thought that if she did so, they would tell the other boys at the party and all of them would want to have intercourse with her. Were it not for this apprehension, she said, she would willingly have had intercourse with both men. Joyce also told Wheeler that she had voluntarily engaged in sexual intercourse in the past with one of the two men. She further admitted that during the preceding two years she had had numerous acts of sexual intercourse with a large number of boys and men, many of whom were unknown to her, and that she had engaged in oral sodomy on humerous occasions. When asked by Wheeler why she had accused the two men of rape, she said that she had told Bostic this to explain thy she took the overdose of pills. She also told Wheeler that she would refuse to testify against the two men if they were charged with rape. Wheeler marked the police file "closed unfounded." (R. 31-33, 60-72, 236-38.)

On or soon after September 1, 1961, Wheeler learned that Joyce Roberts had allegedly been raped in Montgomery County (R. 70). He was not interviewed by the State's Attorney or police of Montgomery County (R. 72).

At the post conviction hearing, petitioners introduced psychiatric testimony that an attempted suicide by a 16-year old girl is a strong indication of serious mental illness (R. 120-25).

The Court of Appeals held that, for the purposes of the rule that prosecution suppression of material exculpatory evidence violates due process, the prosecutor (in Maryland, the State's Attorney for the particular county) was charged with any knowledge of the Montgomery County police, but not with knowledge of police of other counties (R. 245-46).

Detective Lieutenart Whalen of the Montgomery County police was in charge of the police investigation of the alleged rape of Joyce Roberts by petitioners and Johnson (R. 76-77). As was found below, both Whalen and Leonard B. Kardy, the State's Attorney of Montgomery County: knew, prior to petitioners' criminal trial, that Joyce had attempted sulgide (R. 246, 157, 80, 132-33). As also found below, both Whalen and the State's Attorney learned. prior to petitioners' trial, that Joyce had allegedly been raped again, and the State's Attorney knew that there had been no prosecution for this second alleged rape (R. 246. 238, 157, 81, 133-34). Whalen also knew that Joyce's mother had taken her to see a psychiatrist (R. 246, 237. 82). When Joyce's family told Whalen that Joyce had again been raped, this time in Prince George's County. he advised them to report to the authorities of that county, and then paid no further attention to the matter (R. 81; 237). The Montgomery County police and prosecutor made no investigation of the character, background or record of Joyce Roberts (R. 79, 81, 84; 180, 133-34, 237).

As a result of this lassitude, neither the State's Attorney nor Lieutenant Whalen knew the following things which Sergeant Wheeler knew but did not bother to communicate to the Montgomery County authorities: (1) that Joyce had related to Wheeler a fantastic hir rry of sexual promiscuity, (2) that she had initiated the second rape accusation, (3) that the accusation was palpably false, and (4) that she had been hospitalized in a psychiatric ward.

Prior to and during the trial, the defense knew nothing about the incidents which we have described. When the lawyers assigned to defend petitioners and Johnson visited the Roberts' home in an attempt to see Joyce Rob-:

erts, they were denied access to her by Joyce's mother. The mother also refused to discuss the case with them, saying that she had been so instructed by Lieutenant: Whalen, (R. 91-94.)

Joyce Roberts' near-probation status. As already related, petitioners testified at their criminal trial, and Joyce Roberts denied, that while they were in the woods and prior to any sexual intercourse, Joyce told them that she was on probation, that she was in trouble, that she could not afford to be caught with them, and that if raught she would have to claim that she was raped. Joyce testified, under redirect examination by the State, that she had not been on probation, and on cross-examination of petitioners the prosecutors ridiculted their testimony that she had said she was on probation. Supra, pp. 5-6.

It was stipulated at the post-conviction hearing that at the time of the alleged rape, July 20, 1961, there was pending in the Juvenile Court for Brince George's County Maryland, a petition alleging that Joyce was beyond parental control and a recommendation of the court's case worker that Joyce be put on probation (R. 55-56). There was also introduced at the post-conviction hearing uncontradicted evidence that Joyce knew of her near-probation status on July 20, 1961, regarded it as actual probation, and was worried about getting into more trouble. This evidence consisted of testimony of one of Joyce's boy friends, John Patrick Stephens, that on the Saturday be-

Moreover, Joyce was undoubtedly not at home. Unbeknownst to defense counsel (R. 93), the State's Attorney and Whalen, desiring to have Joyce "in protective custody," arranged to have the Javentle Court of Montgomery County commit Joyce to a State School for Girls on September 5, 1961 (R. 77, 85-87, 131, 228-30). This was done even though Joyce was a resident of Prince George's County (R. 87). On April 30, 1962, the Juvenile Court of Montgomery Founty marked its file "Closed No longer [sie] residing within the jurisdiction of the Court" (R. 230).

fore July 30, 1961 (a Thursday), Joyce told him that "she did not want to go down into the Hyattsville, Maryland, area because she was in trouble on her probation" (R. 40).

After petitioners were arrested, they told the police that Joyce Roberts had told them she was on probation. This statement of petitioners was included in the police investigative file, which the State's Attorney saw. (R. 136.) Neither the State's Attorney nor the police made any attempt to ascertain whether Joyce Roberts was on probation on July 20, 1961 or otherwise to investigate her record and background (R. 130, 79, 81-82). Consequently, neither the State's Attorney nor the police of Montgomery County knew of Joyce's near-probation status (R. 129, 85).

Petitioners' assigned counsel did try to find out prior to the criminal trial whether there were Juvenile Court charges pending against Joyce Roberts in Montgomery County and Prince George's County, but was refused access to the court records (R. 93, 235-36). Thus all he knew about Joyce's status was what his clients had told him she had said to them (R. 93-94).

2. The claimed denial of the assistance of counsel.

After petitioners were arrested, they answered interrogations by the police, admitting, among other things, their presence at the scene of the alleged rape, an altercation with Foster, and sexual intercourse by James Giles and Johnson with Joyce Roberts. All of these admissions were made after the police had been led to petitioners by questioning John Bowie, petitioners' companion at the time they first encountered Joyce Roberts and Rewart Foster. Some of the admissions were made after petitioners had been identified in a line-up by Joyce Roberts. Hence petitioners were prime suspects at the time. The statements were made in the absence of any counsel for petitioners. Petitioners did not request

counsel. At petitioners' criminal trial, there was allmitted in evidence a detective's testimony of the admissions made to the police by petitioners. (Ex. 1, pp. 106-25, 203-08.)

At the post-conviction hearing, the same detective testified that petitioners had not been advised, prior to making the statements, that they had a right to be stient (R. 88-89).

The Court of Appeals held that the admission at the criminal trial of petitioners' statements to the police did not violate their constitutional right to the assistance of counsel (R. 241-42).

3. The Maryland rule on newly-discovered evidence.

Rules 567a and 759a of the Maryland Rules of Procedure (Appendix A, infra), promulgated by the Court of Appeals of Maryland, provide that a motion for a new trial must be filed within three days after the reception of a verdict. The Court of Appeals held, in a case brought by petitioners, that this rule applies to motions for a new trial based on newly-discovered evidence (2.240-41, 10). Giles v. State, 231 Md. 387, 190 A.2d 627. It is also Maryland law that newly discovered evidence does not furnish grounds for relief in post-conviction proceedings, including habeas corpus, coram nobis, and the statutory substitute for those writs. Daniels v. Warden, 223 Md. 631, 161 A.2d 461; Diggs v. Warden, 221 Md. 624, 157 A.2d 453.

Petitioners assembled documented evidence, discovered more than three days after their conviction, which was highly probative of their innocence. Under Maryland law, described above, this evidence was, of course, not admissible at the post-conviction proceeding (see, e.g., R. 42, 75-76), except insofar as it related to the suppression claim.

The newly-discovered evidence included evidence of the following matters: 5

- (1) The matters mentioned in our preceding discussion of the suppression claims, including the attempted suicide, the second, unfounded rape accusation, the sexual promiscuity related by Joyce Roberts to Wheeler, her confinement in a psychiatric ward, and her near-probation status.
- (2) On the Saturday before her alleged rape by petitioners, Joyce Roberts told her friend, Stephens, that at a party the preceding week-end she had had sexual relations with sixteen boys (R. 41). This evidence obviously would have corroborated petitioners' trial testimony, contradicted by Joyce, that she had told them virtually the same story on the day of the alleged rape.
- (3) Joyce Roberts manifested an insouciant attitude toward the alleged rape. A day or two after the episode, she told a man friend that the Negroes who had raped her "were bigger and better than white boys" (R. 59, 23). Within a week after, she flippantly told a restaurant owner who asked her what had happened that "one or two more did not make that much difference to her" (R. 21).
- (4) Joyce manifested promiscuous and depraved sexual behavior on numerous occasions (R. 16-17, 22-26, 40).
- (5) Stewart Foster, who, according to petitioners' testimony, had provoked the aftercation at the car by calling petitioners' obscene, racist names (Supra, p. 4), was an habitual brawler and frequently employed the peculiar epithet ascribed to him by petitioners (R. 19-20, 22, 25, 27, 76).

Our description includes material from the following sources: affidavits appended to the post-conviction petition, offers of proof at the post-conviction hearing, some testimony which managed to enter the record of that hearing.

(6) In conversations with friends after the alleged rape, Foster gave accounts of the altercation at the car which corresponded to petitioners! version of how the altercation came about (R. 17, 18-19, 75).

The Court of Appeals held that petitioners were not denied due process of law by the application of the Maryland law precluding judicial consideration of evidence discovered more than three days after verdict (R. 240-41).

C. THE RAISING AND DISPOSITION OF THE FEDERAL QUESTIONS.

In their petition under the Maryland Post Conviction
Procedure Act, filed in the Circuit Court for Montgomery County, Maryland, petitioners included the following allegations raising the federal questions concerning suppression of evidence and the Maryland law precluding relief on the basis of evidence discovered more than three days after verdict:

"3. The grounds upon which this Petition is based are that petitioners are imprisoned in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article 23 of the Bill of Rights of the Maryland Constitution in that...

(b) the State suppressed and withheld material exculpatory evidence and thereby was enabled to, and did, give at the trial a false and misleading impression of the facts; and (c) petitioners have been denied a reasonable opportunity to obtain a new trial on the basis of material exculpatory evidence which was discovered after their convictions and was not available to them at the trial." (R. 8.)

At the hearing, the trial court allowed an amendment of the petition adding the federal question concerning denial of the assistance of counsel, as follows:

> "Petitioners were denied the "Assistance of Counsel' in violation of the Sixth Amendment to the United States Constitution, made obligatory upon the State by the Fourteenth

Amendment, in that at petitioners' trial there was admitted evidence of statements made by them to the police after their arrests in response to interrogations designed to elicit incriminating statements, although petitioners had not been warned of their constitutional right to remain silent." (R. 89-90.)

The trial court decided the federal question of the suppression of evidence in petitioners' favor, holding (R. 164) 'that petitioners were dealed due process of law under the Fourteenth Amendment to the Constitution of the United States in that the State withheld from the defense and suppressed" described evidence. The federal questions concerning the inability to obtain a new trial on the basis of after-discovered evidence and denial of the assistance of counsel were decided by the trial court adversely to petitioners on the merits (R. 163-64).

In the Court of Appeals of Maryland petitioners were appellees on an appeal by the State. Petitioners raised and argued in their brief the federal questions described above. Point I of petitioners' Argument was captioned as follows (R. 175):

"I. Appellees were denied due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article 23 of the Maryland Bill of Rights by reason of the State's withholding of material exculpatory evidence."

Point II B. of the Argument in petitioners' brief was captioned (R. 206):

"B. Application of the Maryland Rule Requiring That New Trial Motions Based on Newly-Discovered Evidence be Made Within Three Days After Verdict Violates Appellees Rights Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

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Point II C. of the Argument in petitioners' brief was captioned (R. 207);

"C. The Admission at Appellees' Criminal Trial of Evidence of Statements Made by Them to the Police Violated Appellees' Hight to the Assistance of Counsel, Guaranteed by the Sixth Amendment to the United States Constitution, Made Applicable to the States by the Fourteenth Amendment."

The Maryland Court of Appeals decided each of these three points adversely to petitioners on the merits (R. 240-42, 252).

Our equal protection question (number 3 of our Questions Presented) raises the contention that petitioners were denied equal protection by the decision of the Court of Appeals by reason of the grounds on which that court based its reversal of the trial court. Accordingly, the question did not exist and could not be raised by petitioners prior to the decision of the Court of Appeals. Therefore the Court of Appeals decided the question by its decision and the question may be reviewed by this Court. Brady v. Maryland, 373 U.S. 83; Cole v. Arkansas, 333 U.S. 196.

REASONS FOR ALLOWING THE WRIT

A. THE SUPPRESSION OF EVIDENCE QUESTIONS

1. As we later show, this case presents major issues concerning the meaning and application of the doctrine that prosecution suppression of exculpatory evidence is a violation of due process which vitiates a conviction. These issues have never been resolved by this Court. Indeed, the Court has barely touched on the doctrine, which — unlike other modern advances in criminal jurisprudence — has been developed by state and lower federal courts. This grass-roots development indicates that the doctrine is a necessary response to advancing demands for the fair administration of criminal justice

and for a reduction of the handicaps of impoverished defendants.

Because of the social importance of the suppression doctrine, because its development without illumination from this Court has been uneven and incomplete, and because its uncertainties are recurring, we believe that it is time for the Court to contribute its guidance in this field on the first appropriate occasion.

This case is that occasion. The issues involved are basic to the suppression doctrine. They are squarely presented. The record is adequate and will hardly be improved by remitting petitioners to federal habeas corpus proceedings. The issues are such that no decision at a level below this Court will be a dispositive precedent, nor will such a decision even conclude the litigation. The decision of the issues by the court below is highly debatable. This appears not only from our later discussion but also from the fact that in a conservative jurisdiction the trial court found, and two dissenters of the Court of Appeals agreed, that the State had in truth procured an unconstitutional conviction and sentences of death by suppressing material exculpatory evidence.

Still other considerations call for the Court to review now the substantial questions presented by this case. Petitioners have been imprisoned for more than four years, of which two were spent on death row prior to commutation of their sentences to life imprisonment. Yet the newly discovered evidence, which the Maryland courts have precluded themselves from considering by a perverse procedural rule, must convince any reasonable mind that petitioners are the innocent victims of a monstrous miscarriage of justice (see supra, pp. 13-15). This case —

At petitioners' elemency hearing there were presented letters to the Governor from five of the jurors in petitioners' criminal trial who had seen the new evidence which had by then been discovered, stating that if they knew at the trial what they now knew they would not have voted to convict. Kempton, Clemency in Annapolis, New Republic, Oct. 26, 1963, pp. 6, 8.

"often called the 'Little Scottsboro Case' "(N. Y. Times, July 14, 1965) — has aroused extensive public doubts about our system of criminal justice. These doubts will not be allayed short of this Court's review.

*2. The suppression doctrine originates with Pyle v. Kansas, 317 U.S. 213, which declared unconstitutional convictions obtained by the State's knowing use of perjured testimony and suppression of evidence favorable to the accused. See also Mooney v. Holohan, 294 U.S. 103; cf. Alcorta v. Texas, 355 U.S. 28; Napue v. Illinois, 360 U.S. 264. But it was not until 1963 that the Court, following a path blazed by other courts, extended Pyle to cases in which the suppression of exculpatory evidence was not accompanied by testimony known to the prosecution to be false or misleading. Brady v. Maryland, 373 U.S. 83. Brady remains the one such suppression case decided by this Court.

Brady stated (at 87):

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith or the presecution."

Brady leaves unanswered many questions. Is the 'upon request" qualification of the quoted passage an indispensable element of the suppression doctring? The court below held the contrary, as do the authorities generally. Barbee v. Warden, 331 F:2d 842, 845 (4th Cir.); United States ex rel. Meers v. Wilkins, 326 F.2d 135, 137 (2d Cir.); United States ex rel. Thompson v. Dye, 221 F.2d 763 (3d Cir.); United States ex rel. Almeida v. Baldi, 195 F.2d 815 (3d Cir.); Ashley v. Texas, 319 F.2d 80 (5th Cir.); United States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (N.D. III.); Smallwood v. Warden, 205 F. Supp. 325 (D. Md.); Application of Kapatos, 208 F. Supp. 883 (S.D. N.Y.); People v. Riley, 191 Misc. 888, 83 N.Y.S.2d 281 (Kings Cty. Ct.).

What is the standard for determining whether undisclosed evidence is "material?" Is "materiality" determined merely by what the prosecution knew or also by what the defense would have discovered if the prosecution had disclosed what it knew? Whose knowledge constitutes knowledge of "the prosecution?" Is the prosecution charged not only with its actual knowledge but also with constructive knowledge of facts it would have discovered by rudimentary diligence? What constitutes absence of knowledge of the defense? All these questions are sharply posed by this case.

3. The Court of Appeals held (R. 252), over vigorous dissent (R. 254-62), that the evidence of the prosecutrix' attempted suicide and the second rape accusation was not material and that therefore its non-disclosure by the prosecution was not a violation of due process.

The threshold question is what is the test of materiality. In the cognate situation of prosecution use of testimony known to be false, the standard of materiality is whether "the false testimony... may have had an effect on the outcome of the trial." Napue v. Illinois, 360 U.S. 264, 272. Similarly, where unconstitutionally obtained evidence has been admitted, "The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction."

Fahy v. Connecticut, 375 U.S. 85, 86-87.

Those were cases in which the constitutional vice was the admission of evidence. It would appear that a similar standard should apply where the vice is the non-disclosure of evidence. Hence the test in a suppression case should be whether the undisclosed evidence, if revealed, might have affected the outcome of the trial. This test was in fact applied by the Maryland Court of Appeals in Brody v. State, 228 Md. 423, 174 A.2d 167, aff'd sub nom.

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Brady v. Maryland, supra, as well as by other courts.

Barbee v. Warden, 331 F.2d 842, 847 (4th Cir.) ('One cannot possibly say with confidence that such a defect in trial was harmless'); Smallwood v. Warden, 205 F. Supp. 325, 330 (D. Md.) (the withheld evidence 'might well have affected the result of the trial'); People v. Riley. 191 Misc. 888, 83 N.Y.S.2d 281, 284 (Kings Cty. Ct.) (the withheld evidence "could have been helpful to the defendant"); United States ex rel. Thompson v. Dye, 221 F.2d 763 (3d Cir.) (the withheld evidence was cumulative). Cf. Griffin v. United States, 183 F.2d 990 (D.C. Cir.).

A standard less favorable to the accused is particularly inappropriate in a case like this one — a capital case, indigent defendants, and a Maryland rule which, by precluding new trials on the busisful after discovered evidence, gives unusual finality to criminal trials. And see infra, p. 31, as to the effect of the Maryland rule that the jury is the judge of the law.

The Court of Appeals conceded that the prosecution had suppressed evidence of the attempted suicide and the second rape accusation (R. 246-47). We claim, as later appears, that the suppression was of much more. But even the evidence concededly suppressed more than meets our suggested standard that its disclosure might have affected the result.

At the criminal trial, the case came down to an issue of credibility between the prosecutrix and the accused. See supra, pp. 5-6; Giles v. State, 229 Md. 370, 381, 183 A.2d 359, 364; Johnson v. State, 232 Md. 199, 205, 192 A.2d 506, 509. Petitioners offered nothing to impeach the credibility of Joyce Roberts or to corroborate their

The court in Brady expressed its "considerable doubt as to how much good" the undisclosed evidence would have done the accused. 226 Md. at 429, 174 A.2d at 171. It then held that "it would be "too dogmatic" for us to say that the jury would not have attached my significance to this evidence. . . . " 226 Md. at 430, 174 A.2d at 171.

version of the events. An all-white jury had to decide between believing the unimpeached testimony of a young white girl and the uncorroborated testimony of Negro defendants that she had solicited sexual intercourse. The result was a foregone conclusion. This would not have been true had the defense been able to produce and to use on cross-examination the evidence admittedly suppressed, not to mention the other evidence which we claim was suppressed.

Evidence indicating mental illness or emotional disturbance is relevant to impeach a witness' credibility. Such evidence goes not to character, but to the capacity and ability of the witness accurately to perceive and describe his or her experiences and, in sex cases, to the witness' bias against a class (men) to which the accused belong. 3 Wigmore, Evidence (3d Ed. 1940) 5 931. Suppression of evidence indicating possible mental illness of a State's witness requires habeas corpus relief. Powell

Among the types of evidence included in this category are the following: Instances of aberrant behavior. People v. Cowles, 248 Mich. 429, 224 N.W. 387; Miller v. State, 49 Okla. Cr. 133, 296 Pac. 403; People v. Bastian, 330 Mich. 457, 47 N.W.2d 892; State v. Poolos, 241 N.C. 382, 85 S.E.2d 342. Past confinement in a mental institution. Powell v. Wiman, 287 F.2d 275 (5th Cir.); United States v. Pugliese, 153 F.2d 497, 499 (2d Cir.); People v. Kirkes, 243 P.2d 816, 852 (Dist. Ct. App.). aff'd, 39 Cal, 2d 719, 249 P.2d 1; Walley v. State, 240 Wis. 136, 126 Sq. 2d 534. Psychiatric testimony, whether based on observation of the witness or on instances of aberrant behavtor. Powell v. Wiman, 293 F.2d 605 (5th Cir.); Ashley v. Texas, 319 F.2d 80 (5th Cir.); Coffin v. Reichard, 148 F.2d 278, 280 (6th Cir.); United States v. Hiss, 86 F. Supp. 559 S.D. N.Y.); Taboraky v. State, 142 Conn. 619, 629-30, 116 A.2d 433, 437-38; People v. Cowles, supra; Rice v. State, 195 Win. 161, 217 N.W.2d. 697; Bouldin v. State, 87 Tex. Cr. R. 419, 222 S.W. 555; State v. Wesler, 137 N.J.L. 311, 59 A.2d 894, aff'd, 1 N.J. 58, 61 A.2d 746. In sex cases, instances of prior accusations of sexual molestation. Rice v. State, supra; State v. Waster, supra; Smallwood v. Waster, 205 F. Supp. 325 (D. Md.).

v. Wiman, 287 F.2d 275 (5th Cir.); Powell v. Wiman, 293 F.2d 605 (5th Cir.); Smallwood v. Warden, 205 F. Supp. 325 (D. Md.); United States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (N.D. III.). Evidence of emotional disturbance is particularly important in sex cases because modern medical science has established the existence among some young girls and women of a psychic computsion "of contriving offenses by men." 3 Wigmore, op. cit., \$ 924a.

The evidence of a second rape accusation, made one month after the alleged rape by petitioners and three months before trial, obviously indicated that such a compulsion existed here. Suppression of a prior rape accusation was one of the grounds for granting habens corpus relief in the rape case of Surfficient v. Warden, supra. And prior accusations of sexual molestation are admissible in prosecutions for sex affunces. Rice v. State, 195. Wis. 161, 217 N.W.28 607; State v. Wesler, 137 N.J.L. 311, 59 A.26 834, aff'd, I N.J. 58, 51 A.2d 746.

The psychiatric testimony at the post-conviction hearing established that the suicide attempt was highly indicative of serious mental illness (supra, p. 9). And even without such testimony, evidence of attempted suicide is admissible to impeach a witness' credibility. State v. Poolos, 241 N.C. 382, 85 S.E.2d 342; see United States v. Soblen, 391 F.2d 236, 242 (2d Cir.).

In holding that the admittedly suppressed evidence was immaterial, the court below inverted the correct standard. The court applied not the principle that suppressed evidence is material if it might have affected the result, but rather a principle that the evidence is immaterial if it might not have affected the result.

The court's stated theory of materiality was as follows: (R. 245):

"We think that in order for the nondisclosure of evidence to amount to a denial of due process it must be such as is material and capable of clearing or tending to clear the accused of guilt or of substantially affecting the punishment to be imposed in addition to being such as could reasonably be considered admissible and useful to the defense."

This passage makes a distinction between two concepts — "useful to the defense" and "tending to clear the accused" — which by normal usage mean the same thing. The explanation of the court's distinction is that it gave a unique meaning to "tending to clear the accused" — that evidence has such a "tendency" only if it is foolproof. This appears from the following ways in which the court speculated about the withheld evidence:

(1) Mental illness of the prosecutrix on August 26, 1961, the date of the attempted suicide, would not be material for impeaching her credibility because her testimony was given some three months later, on December 4, 1961 (R. 247-48). 9

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The court justified this conclusion by asserting (R. 247-48) that the psychiatrist who testified in the post-conviction proceeding stated that the attempted suicide on August 26 would not permit an opinion as to the prosecutrix' mental condition at the date of trial. The assertion represents a misreading of the testimony. The psychiatrist first did express an opinion on the subject, saying that "there is a substantial risk that she would still be mentally iil three-and-a-half months later" (R. 122). Then occurred a confusing exchange with the trial judge, in which the witness' response could be interpreted to mean that he could not give such an opinion (R. 122-23). But the witness then contradicted the apparent contradiction by testifying that he did have an opinion about how the mental illness would affect the person's credibility as a witness (R. 124). The trial court inemplicably sustained objections to the efforts of petitioners' counsel to clarify the testimony (R. 124-125). In any event, it takes no psychiatrist to appreciate that even if the prosecutrix had recovered from mental illness, the existence of such illness at the time of the episode or between the episode and the trial could well have affected her ability to recall the episode accurately even if it did not affect her verscity at the trial.

- (2) The attempted suicide was not material because the jury might have concluded (incorrectly) that it was indicative of emotional disturbance caused by the prosecutrix' alleged rape by petitioners and Johnson (R. 248).
- (3) In unwitting contradiction of (2), the attempted suicide was not material because it "was an outgrowth of an incident totally unrelated" to the alleged rape by petitioners (R. 249).
- (4) The prosecutrix' second rape accusation was not material because it was made to her boy friend and not to the police (R. 251, 237). 10
- (5) Evidence indicative of mental illness was not material to impeach the prosecutrix' credibility, because it did not establish total incompetence as a vitness or contradict her trial testimony (R. 249).
- (6) Evidence that the prosecutrix was suffering from nymphomenia would contribute "nothing to show... that she had consented" to sexual intercourse by petitioners (R. 251).
- 4. In determining the materiality of the concededly suppressed evidence, the court below considered only what the prosecution (the State's Attorney and Lieutenant Whalen) actually knew (R. 245-46). This knowledge, though significant, was incomplete because of the prosecution's indifference to the matters reported to them. The court did not take into account the further information which would have been acquired by a diligent defense

The court overstated the evidence in saying (R. 251) that Joyce Roberts denied to Bergeant Wheeler that any rape had occurred. She first told Wheeler that the two men at the Edmonston party "had had sexual relations with her against her will" (R. 65-66) — clearly an accusation of rape made to a police officer. Then, under questioning by Wheeler, she thyulged the facts which showed her accusation was unfounded, without ever acknowledging that she had not in fact been raped.

if the prosecution had divulged its actual knowledge. Such a divulgence would have led the defense to Sergeant Wheeler and the hospital records. The information which would have been acquired from these sources would have solidified the materiality of the attempted suicide and the second rape accusations by eliminating any possibilities that the overdose of pills was accidental, that the second rape accusation was not initiated by Joyce Roberts, or that the accusation was true. The defense would also have discovered that Joyce had been hospitalized in a psychiatric ward and that she had given Wheeler an incredible history of wantonness.

Evidence of the latter facts had an independent materiality. Evidence of past confinement in a mental institution is admissible to impeach a witness' credibility. Cases cited supra, p. 22, ftn. 8. Suppression of such evidence concerning a State's witness requires habeas corpus relief. Powell v. Wiman, 287 F.2d 275 (5th Cir.). In sex prosecutions, evidence is admissible of the prosecutrix' possible nymphomania. People v. Cowles, 246 Mich. 429, 224 N.W. 387; Miller v. State, 49 Okla. Cr. 133, 295 Pac. 403; People v. Bastian, 330 Mich. 457, 47 N.W.2d 692. Moreover, the history of promiscuity related to Wheeler would have corroborated petitioners' trial testimony, thoroughly inconsistent with rape, that Joyce Roberts had told them that she had had intercourse with 16 or 17 other boys that week. For evidence of what she told Wheeler would have established the definite possibilities that she had had such an experience and that she would have recounted it.

Finally, if the defense had known the facts, it would undoubtedly have moved for and obtained a pre-trial mental examination of the prosecutrix. And considering the evidence eventually developed about her (supra, p. 14), such an examination might well have produced a diagnosis destructive of her credibility.

The dissent below urged (R. 260) that the information actually known to the State's Attorney and Lieutenant

Whalen was material not only because it was "important... of itself to the defense," but also because it was "usable as the basis for further investigation." We believe that the dissent has the better of the argument. This Court should settle whether the materiality of suppressed evidence (once it is conceded, as here, that the prosecution has a duty to disclose it) depends not merely on what an indifferent prosecution knew, but also on what a diligent defense would have learned if the prosecution had complied with its duty of disclosure?

5. One cannot dispute the materiality of the prosecutival near-probation status on the night of the alleged rape. Proof of that status, which a hyman could well have described as "probation," and of which petitioners could not have known except from the prosecutival would have been important corroboration of petitioners testimony that the prosecutival had told them she was "en probation" and "in trouble," could not afford to be caught with them, and if caught would have to claim rape. See supra, p. 11. Such proof also would have eliminated the false impression engendered at the trial by the prosecution's ridicule of petitioners' testimony that Joyce Roberts had told them she was on probation and by Joyce's testimony that she was not on probation.

The court below held, without elucidation, that there was no suppression of evidence of the near-probation status (R. 252). Presumably the holding is based on the fact that neither the State's Attorney nor Lieutenant.

Whalen knew of the status. 11

The cases hold, as did the decision below, that for the purposes of the suppression doctrine the prosecution is charged with the knowledge of the investigating police. Barbes v. Warden, 331 F.2d 842, 846 (4th Cir.); Hall v. Warden, 222 Md. 590, 158 A.2d 316. The prosecution is also responsible for false testimony by a policeman. Strongides v. Warden, 228 Md. 663, 180 A.2d 854; Current v. Delaware, 259 F.2d 707 (3d Cir.). There were no authorities prior to the negative holding below in this case (R. 246) on whether, for purposes of the suppression doctrine, the prosecution is charged with knowledge of the police of another county.

In our view, the prosecution should have been charged with knowledge of the near-probation status because its failure to obtain such knowledge was a result of a gross breach of its duty, owed both to the public and to persons accused, of exercising rudimentary diligence in criminal investigations. For the same reason the prosecution should also be charged with knowledge of all that Sergeant Wheeler knew. 12

That the prosecutor and police were grossly negligent seems beyond question. The circumstances known to the police were such that any responsible police officer and prosecutor could not help but realize the need to investigate the character and background of the prosecutrix and to seek out whether there were facts to confirm the account of the accused.

The medical evidence showed sexual intercourse, but not forcible penetration (R. 216-17). By the prosecutrix' own story (R. 217-22): A 16-year-old girl was alone in the woods, late at night, with a 21-year-man. They had gone there with two other men. They were, she said, to be joined by two of her girl friends, but these never appeared. They were, she said, going swimming, but she had no bathing suit with her. When the altercation at the car started, she ran into the woods for only 30 feet. When John Giles joined her there, she quietly conversed with him for about ten minutes. She was the first to introduce the subject of sex, offering him intercourse if he helped her get away. When James Giles and Johnson joined them she offered ne resistance to intercourse. Fright might explain the lack of resistance or outcry, but not her failure to ask to be let alone. (Her conversation with John Glies proved that she had not been struck dumb.)

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And it may be that the State should also be charged with Wheeler's knowledge because of his negligence in failing to communicate his sensational information to the Montgomery. County authorities when he learned of the case pending against petitioners. See supra, p. 9.

She was not threatened or subjected to violence. She removed her own clothes.

Along with this, petitioners' account to the police claimed consent and pointed to mental derangement and sexual promiscuity. Petitioners also told the police that Joyce had said she was on probation (R. 129). Lieutenant Whalen also knew that Joyce had been taken to a psychiatrist (R. 82). The charge was of a capital offense, and the indigent accused had no investigative resources.

Yet the State's Attorney and the police did not lift a finger to inquire into Joyce's record and character or to attempt to verify the account of the accused by checking whether she was "on probation." They maintained their passivity even after they had received news of the attempted suicide and the second rape accusation. Signa, p. 10. They also knew of specific important things to investigate—the suicide attempt, the second rape accusation, whether Joyce was on probation. The information they neglected to procure was readily obtainable by them, being in the hands of the authorities of an adjacent county

In short, the State's Attorney and the police determinedly avoided all possible exposure to information favoring the accused despite circumstances which cried for investigation. It is unbelievable that they would have shown the same apathy if the social and economic status of the protagonists had been reversed — if the accused had been white, middle-class youths and the complaining witness an impoverished Negro girl.

We ask the Court to decide whether for the purposes of the suppression doctrine the prosecution should be charged with knowledge of information it would have obtained but for its culpable negligence. The authorities, though meagre, indicate that the answer is in the affirmative.

Prosecution suppression of material evidence renders, a conviction unconstitutional even though the State offi-

cials acted in good faith. Brady v. Maryland, 373 U.S. 83, 87. It follows that a negligent suppression of material evidence is unconstitutional.

Ordinarily, the negligence consists of a breach of duty to communicate evidence to the accused. But communication is not the only duty involved. Thus the State also has a duty to preserve exculpatory evidence, so that its negligent loss by the State renders a conviction unconstitutional. Kyle v. United States, 297 F.2d 507 (2d Cir.); United States v. Heath, 147 F. Supp. 877 (D. Hawaii); United States v. Consolidated Laundries Corp., 291 F.2d 563 (2d Cir.).

What is involved here is a cognate duty, that of the State to exercise rudimentary diligence to acquire, and certainly not to avoid, relevant evidence. The existence of such a duty has been recognized. In United States ex rel. Monigomery v. Ragen, 86 F. Supp. 382 (N.D. Ill.), habeas corpus relief was granted on the ground that "the prosecution either knew or should have known" of important exculpatory evidence and was "charged with the knowledge" (at 390): The court also stated (at 387) that a prosecutor "must not willingly ignore that which is in an accused's favor."

Smith v. Commonwealth, 331 Mass. 585, 121 N.E.2d 707, holds that the prosecution has a duty to investigate an accused's reasonable claim of an alibi, even if the prosecutor in good faith believes that the defendant is guilty. People v. Fishgold, 71 N.Y. Supp. 2d 830 (Kings Cty. Ct.), recognizes the duty of the State to investigate the credibility of its witnesses. See also in Re Imbler, 35 Cal. Rptr. 293, 300, 387 P.2d 6, 13, stating: "We have no doubt that negligence of representatives of the state in preparing and presenting a criminal prosecution could in some cases result in a denial of a fair trial."

6. There can, of course, be no unconstitutional suppression of information known to the defense. It is unquestioned that petitioners' assigned counsel had no knowledge of the information in Sergeant Wheeler's possession and that, as he testified (R. 92-93), all he knew of the background of Joyce Roberts was his clients' account to him of what she told them on the night of July 20, 1961. Counsel's attempt to get further information was frustrated by his inability to interview Joyce and to obtain Juvenile Court records. Supra, pp. 10-12.

Nevertheless, the Court of Appeals held that "the defense must have known of the prosecutrix' general reputation for unchastity and that she was a sexually promiscuous girl." This holding was based on the fact that petitioners' account to their counsel raised "some questions as to the character of the prosecutrix which properly would have been investigated." (R. 250.)

The court thus applied a double standard. It refused to charge the negligent prosecution with constructive knowledge. It charged the diligent defense counsel with constructive knowledge.

- Moreover, other courts hold that prosecution withholding of exculpatory information not known to the defense is not excused even if the information would have been obtained by a diligent defense. Barbee v. Warden, 331 F.2d 842, 845 (4th Cir.); People v. Hoffner, 129 N.Y. Supp. 2d 833 (Queens Cty. Ct.).
- 7. The Court of Appeals held that the suppression of the evidence of the attempted suicide and second rape accusation, though concededly admissible (R. 246-47), did not constitute a violation of due process because the evidence was not material and its suppression not prejudicial. This holding denied petitioners the equal protection of the laws in view of Maryland's unique provision that the jury is the judge of both the law and the facts (Md. Constitution, Art. XV, § 5, infra, Appendix A). For by its holding the Court of Appeals substituted court determination for jury determination in an erratically selected class of cases those in which the prosecution has suppressed admissible evidence.

Brady v. Maryland, 373 U.S. 83, held that the Court of Appeals had not violated equal protection by according no more than a new trial limited to the issue of punishment where the prosecution had suppressed evidence relevant only to punishment. The holding was based, however, on the fact that despite the Maryland provision on the authority of the jury, the Maryland courts had retained the power to determine the admissibility of evidence. Both the opinion of the Court and the dissenting opinion of Justices Harlan and Black recognized that the equal protection clause would have been violated by the holding of the Court of Appeals if the suppressed evidence had been admissible on the issue of guilt as well as punishment. See Brady at 89, 92-93.

In the present case, the Court of Appeals conceded that the suppressed evidence of the suicide attempt and second rape accusation was admissible on the issue of guill. Hence Brady n. Maryland teaches that the Court of Appeals denied petitioners the equal protection of the laws by substituting its appraisal of the exculpatory value of the suppressed evidence for the jury's.

B. THE DENIAL OF COUNSEL QUESTION.

In Escobedo v. Illinois, 378 U.S. 478, 490-91, the Court held:

"We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain stient, the accused has been denied the Assistance of Counsel' in violation of the Sixth Amendment to the

Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' Gideon v. Wainwright, 372 U.S. at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

The facts in this case correspond with those described in the quoted passage with one exception — here the indigent petitioners did not, prior to or during the police interrogation, request an opportunity to consult a lawyer. Supya, pp. 12-13. Since the right of counsel had attached when petitioners were interrogated, and since that right was not waived merely by a failure to demand it (Massiah v. United States, 377 U.S. 201), the distinction should make no difference. As Mr. Justice White pointed out in his dissent in Escobedo (at 495), "At the very least the Court holds that once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel."

Regardless of theory, there is an urgent necessity for the Court to decide whether or not the Escobedo doctrine applies in the absence of a request for counsel. For there is a hopeless conflict among the Circuits and among the States on this very point, including a direct confrontation between the Third Circuit, which holds that habeas corpus relief must be granted, and the Supreme Court of New Jersey, which insists that the Third Circuit is wrong. Holding that Escobedo applies notwithstanding failure to request counsel are: United States ex rel. Russo v. New Jersey, 3d Cir., May 20, 1965, 33 U.S.L.W. 2621; Wright v. Dickson, 336 F.2d 878, 882 (9th Cir.); Galarza Cruz v. Delgado, 233 F. Supp. 944 (D. P.R.); People v. Dorado. 42 Cal. Rptr. 169, 398 P.2d 361, cert. den., 381 U.S. 937, 946; State v. Neely, 79 Ore. Adv. Sh. 257, 80 Ore. Adv. Sh. 69, 395 P.2d 557, 398 P.2d 482; State v. Le Brim, 402 P.2d 515 (Ore.); State v. Dufour, 206 A.2d 82 (R.L.); State v. Mendes, 210 A.2d 50, 52-55 (R.L.). Holding to the contrary: Jackson v. United States, 337 F.2d 136 (D.C. Cir.)

(Fahy, Jr., dissenting), cert. den., 380 U.S. 935; Davis v. North Carolina, 339 F.2d 770 (4th Cir.) (Sobeloff and Bell, JJ., dissenting), cert. den., 365 U.S. 855; Othey v. United States, 340 F.2d 696 (10th Cir.) (Murrah, C.J., dissenting); Payne v. United States, 340 F.2d 748 (9th Cir.) (Browning, J., dissenting); United States v. Childress, 347 F.2d 448 (7th Cir.); State v. Ordog, 45 N.J. 347, 212 A.2d 370, 378; Commonwealth v. Tracy, 207 N.E.2d 16 (Mass.); People v. Gumer, 15 N.Y.2d 226, 205 N.E.2d 852; State v. Fox, 131 N.W.2d 684 (Iowa); Commonwealth v. Coyle, 415 Pa. 379, 203 A.2d 782; Browne v. State, 24 Wis, 2d 491, 129 N.W.2d 175, 131 N.W.2d 169, cert. den., 379 U.S. 1004; People v. Hartgraves, 31 Ill. 2d 375, 202 N.E.2d 33, cert. den., 380 U.S. 961; Bean v. State, 398 P.2d 251 (Nex.).

C THE NEWLY-DISCOVERED EVIDENCE QUESTION:

under Maryland law, newly-discovered evidence, no matter how object, is not available as a ground for setting aside a conviction with the academic exception of a new-trial motion filed within three days after verdict. As a result, petitioners, serving life sentences, have been and are precluded from obtaining judicial consideration of the massive new evidence of innocence which was not available at the trial and which the indigent accused and their appointed counsel could not possibly have discovered before trial. Supra, pp. 13-15.

in a modern, democratic society, infallibility may no more be attributed to courts than to royalty. And it is shocking that the policy against punishment of the innocent should be wholly sacrificed to the lesser policy favoring finality of judgments. Other jurisdictions have had no untoward results when they have accommodated the policies by allowing a reasonable time for new-trial motions alleging newly-discovered evidence. Cf. Rule 33, Fed. Rule Cr. Proc., allowing two years after final judgment.

Maryland's archaic procedural rule preventing the correction of miscarriages of justice violates due process because it offends a "fundamental" principle of justice (Snyder v. Massachusetts, 291 U.S. 97, 105), is "repugnant to the conscience" (Palko v. Connecticut, 302 U.S. 319, 323), and creates an "invidious discrimination" against those accused who are prevented by poverty from conducting extensive pre-trial investigations. Griffin v. Illinois, 351 U.S. 12.

CONCLUSION

Certiorari should be granted and the judgment below reversed.

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Respectfully submitted,

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APPENDIK A

STATUTES AND RULES INVOLVED

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1. Md. Code (1957) Art. 27, \$ 461, provides:

"\$ 461: Rape generally.

Every person convicted of the crime of rape or as being accessory thereto before the fact shall, at the discretion of the court, suffer death, or be sentenced to confinement in the penitentiary for the period of his natural life, or undergo a confinement in the penitentiary for not less than eighteen months nor more than twenty-one years; and penetration shall be evidence of rape, without proof of emission."

2. Art. 27, § 645A(a), Md. Code (1957), Cum. Supp. (1964), provides:

"§ 645A. Right of appeal of convicted persons.

(a) Appeal in lieu of former remedies; when denied. Any person convicted of a crime and incarcerated under sentence of death or imprisonment, who claims that the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of this State, or that the court . . . was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a watt of habeas corpus, writ of coram nobis, or other commonlaw or statutory remedy, may institute a proceeding under this subtitle to set aside or correct the sentence, provided the alleged error has not been previously and finally litigated or waived in the proceedings resulting in the conviction, or in any other proceeding that the petitioner has taken to secure relief from his conviction."

3. Maryland Rules of Procedure (1963 Ed.), prescribed by the Court of Appeals of Maryland, contains the following provisions, among others, under Subtitle BK, Post Conviction Procedure:

"Rule BK40." How Commenced-Venue.

A proceeding under the Uniform Post Conviction Procedure Act shall be commenced by the filing of a verified petition in a court having criminal jurisdiction in the county where the conviction took place."

Trule BK 44. Hearing.

d. Evidence. Se ad Made wasterlong bas legach and

The court may receive proof by affidavit or deposition and may also take oral festimony or other evidence, where justice so requires."

"Rule BL45. Order of Court.

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After the hearing the court shall make such order on the petition as justice may require. In the event the order shall be in favor of the petitioner, the court may also provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

c. Finality.

Such order shall constitute a final judgment for purposes of review."

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4. Rules 567a and 759a of the Maryland Rules of Procedure provide:

'Rule 567. New Trial . . . Law1

a. Motion - When to Be Filed.

A motion for a new trial shall be filed within three days after the reception of a verdict, or, in case of a special verdict or a trial by the court within three days after the entry of a judgment nisi."

'Rule 759. Motions After Verdict.2

a. Motion for New Trial.

A motion for a new trial shall be made pursuant to Rule 567 (New Trial). A motion for a new trial shall be heard by the court in which the motion is pending, except that in the case of a motion for a new trial pending in the Criminal Court of Baltimore, such motion shall be heard by the Supreme Bench of Baltimore City. The court may grant a new trial if required in the interest of justice."

5. Article XV, Section 5 of the Constitution of Maryland provides:

"In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass on the sufficiency of the evidence to sustain a conviction."

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¹ Rule 567 is a civil rule.

² Rule 759 is included in Chapter 700, entitled "Criminal Causes."

APPENDIX R

THE OPINION AND JUDGMENT BELOW Views and the Control of the Control

IN THE COURT OF APPEALS OF MARYLAND NO. 443.

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SEPTEMBER TERM, 1964 evention and best

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: Hammond Borney. Marbury Sybert Oppenheimer Barnes Carter, J. DeWeese (specially assigned). Selection of the contract of t

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Filed: July 13, 1965

This is the third time the appellees, James V. Giles and John G. Giles, have been before this Court in connection with matters pertaining to their convictions for rape. In Giles v. State, 229 Md. 370, 183 A.2d 359 (1962), appeal dismissed 372 U.S. 767 (1963), we affirmed convictions for rape committed by the appellees on a sixteen year old girl in Montgomery County on July 20, 1961, We subsequently affirmed the denial of a motion for a new trial based on newly discovered evidence in Giles v. State, 231 Md. 387, 190 A.2d 627 (1963). The case at bar isan appeal by the State-from the action of the Circuit Court for Montgomery County in granting the appellees a new trial on the rape charge under the provisions of the Post Conviction Procedure Act after it had ruled as a preliminary matter that the appellees were authorized to take depositions in post conviction proceedings. The new trial was awarded following the finding of the lower court that the prosecution had suppressed and withheld evide ce from the appellees in violation of their constitutional right to due process.

On this appeal the State raises two questions. First, it contends that because the rules relating to the taking of depositions in civil proceedings are not applicable to proceedings under the P.C.P.A., it was error to permit the taking of depositions. The primary contention of the State, however, is that the new trial was improperly granted for two reasons. One, that the failure of the prosecution to turn over to the defense information it had pertaining to an alleged rape complaint, concerning an incident involving the prosecutrix (but not the appellees) that occurred after the rape for which the appellees were ' convicted but before the trial of their case, and, two, that the neglect to inform the defense of an alleged suicide attempt by the prosecutrix following the alleged rape incident, also before the trial of the charges against them, did not deny the appellees their right to due process under the facts and circumstances of this case.

Aside from the questions presented by the State, the appellees, without having filed a cross-appeal; raise two questions decided adversely to them at the hearing below. They contend that Rule 759 a, together with Rule 567 a, reguiring motions for a new trial in a criminal case to be filed within three days after verdict is a denial of due process; and that the admission into evidence at the trial of the original case of statements made by them when they were prime suspects, without advising them of their right to remain silent, and at a time when they were without counsel, was also a violation of due process. While the new trial was granted on the basis of the suppression of evidence relating to the alleged rape complaint and alleged suicide attempt the appellees would have us review all evidence concerning the sexual promiscuity of the prosecutrix, her claimed near probation status at the time of the rape, and her mental condition and health on the theory that evidence pertaining to these matters was also suppressed.

The undisputed and disputed facts surrounding the incident of July 20, 1961, which led to the convictions for rape were set forth in Giles v. State, supra (229 Md.). That case disclosed that on July 20, 1961, Joyce Roberts (the prosecutrix) and Stewart Foster were approached by three young colored males as they sat in an automobile in a secluded spot in Montgomery County. An argument ensued which resulted in the smashing of the automobile windows by the intruders and the unlocking of the doors of the vehicle. Stewart tried to ward off the attack but was knocked unconscious. Joyce got out of the vehicle and fled into the woods where, after a short distance, she tripped and fell. She hid in the underbrush but shortly thereafter was discovered by the three youths. She claimed that all three then had intercourse with her against her will and without her consent and that she put up little resistance because it appeared obvious to her it was futile to do so. John Giles claimed that after he found the prosecutrix she insisted he have intercourse and all today of the committeet and a leader that the

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with her but he declined. James Giles testified that the prosecutrix invited all three of them to have intercourse with her and that she specified the order in which they were to do so, and when his act was interrupted by lights from a police car all three fled the scene. Both of the Giles brothers testified that the prosecutrix told them she would have to say she had been raped if they were caught in the woods because "she was on a year's probation" or "was in trouble." Subsequent to their arrest, the appellees gave statements to the police in which James admitted he had intercourse with the girl but John denied such an act.

Sometime after the affirmance of the rape convictions we had before us the appeal by the appellees from a denial of a motion for a new trial based on newly discovered evidence. The claimed newly discovered evidence primarily involved the testimony of Stewart Foster at the criminal trial and extrajudicial statements made by him to a girl friend concerning the person or persons responsible for provoking the attack on the automobile in which Foster and the prosecutrix were sitting prior to the rape. Based on the rule requiring motions for a new trial in criminal cases to be made within three days after verdict we affirmed the denial of the motion. Subsequent to this the death sentences imposed on the appellees were commuted to life imprisonment. Thereafter relief was sought by the appellees under the P.C.P.A. which resulted in this appeal by the State from the granting of the relief sought.

At the hearing in the post conviction proceeding it was shown that about September 1961 a member of the Montgomery County Bar was appointed to represent the appellees as indigent defendants. He made an investigation of the case which included a discussion of the matter with the State's Attorney for Montgomery County and an examination of the prosecution's entire file, including the police report. While counsel for the appellees was prohibited from discussing the case with Joyce Roberts by her

mother, he knew the facts surrounding the alleged consent of the prosecutrix from his discussions with the Gileses. Although he tried to examine the records of the juvenile courts in Montgomery and Prince George's Counties, the attorney was not permitted to see those records.

The most pertinent evidence adduced at the post conviction hearing involved an alleged suicide attempt by the prosecutrix and an alleged false rape claim. It was shown that on August 26, 1961, about five weeks after the rapes by the appellees and Joseph Johnson, the prosecutrix went to a party in Prince George's County and that when she entered a bathroom a boy followed her and had intercourse with her against her will. The extent of her resistance was to remove his hands from her body several times. Shortly thereafter another boy had intercourse with her in the yard of the premises where the party was being held which was against her will, but she offered no. resistance to this act. On previous occasions the prosecutrix had had intercourse with one of the boys and would have consented to both acts on this occasion but for the fact she was fearful they would tell other boys at the party and they would all want to do the same thing. The following morning Joyce was admitted to the Prince George's General Hospital after having taken an overdose of bufferin tablets and sleeping pills in what was diagnosed as an attempted suicide. The above facts were brought out at the post conviction hearing by the testimony of Sgt. Wheeler of the Prince George's County police who interviewed the prosecutrix in the hospital on August 30, 1961. after he had received a complaint from Joyce's father that she had been raped at the party on August 26, 1961. Joyce Roberts was not called as a witness at the post conviction hearing.

While the prosecutrix was in the hospital for having taken the overdose of pills she was visited by a boyfriend who asked her why she had taken the pills. She told him she had been raped and that this was her reason for tak-

ing the pills. Without Joyce's knowledge the boy informed her mother of the incident of August 26 as related to him by Joyce. The prosecutrix' father then made a complaint of the alleged rape to Lt. Whalen of the Montgomery County police. The officer told Joyce's father to contact the Prince George's County police since the alleged rape had taken place in that county. Lt. Whalen made no investigation of the complaint nor of the facts surrounding the overdose of pills taken by Joyce of which he was also informed. He was never affirmatively informed that Joyce had attempted suicide. Although Lt. Whalen was aware of the fact that Joyce's mother had at one time taken her to see a psychiatrist, he did not have any information that Joyce was mentally disturbed or mentally ill. Aside from not pursuing any of the facts surrounding the incident of August 26th and the taking of the overdose of pills, Lt. Whalen did not make any investigation into the character of the prosecutrix when he was investigating the rape complaint of July 20, 1961.

It was after being advised by Lt. Whalen to report the incident of August 26th to the Prince George's County police that Joyce's father made the complaint which resulted in Sgt. Wheeler's visit to the hospital. At the time of the interview Sgt. Wheeler did not know that Joyce was the complaining witness in a rape case in Montgomery County. After relating the incident that occurred at the party to the police officer, Joyce informed him that she did not wish to make any complaint of rape and that she had not authorized any such complaint to be made. Based upon these statements and upon Joyce's assertion that she would refuse to testify if any such complaint was pursued, Sgt. Wheeler, with the consent of Jöyce's father, marked the case "closed and unfounded."

The State's Attorney for Montgomery County testified at the post conviction hearing that prior to the trial of the criminal case he knew Joyce Roberts had been hospitalized for taking excessive drugs and, although he had no direct information of any suicide attempt he suspected

the drug incident might have been connected with the occurrence of July 20, 1961. The prosecutor had been informed of a rape charge in Prince George's County involving Joyce Roberts in which the charge was made by another, but he was also aware that the charge had been investigated and dropped.

With respect to the overdose of sleeping pills as indicating an attempted suicide by the prosecutrix, the records of Prince George's General Hospital disclosed that Joyce Roberts, was admitted on August 27, 1961, following the taking of an overdose of bufferin tablets and sleep. ing pills in a suicide attempt, secondary to "adjustment" reaction of adolescence." The record showed that the prosecutrix was given an admitting diagnosis as a psychopathic personality, placed in the psychiatric ward, and discharged after nine days. The case history stated that "this present episode is result of parental arguing, incompatability with parents, and difficult adjustment." The attending physician diagnosed the condition of the prosecutrix as an adolescent reaction. In the opinion of a psychiatrist the prosecutrix was mentally ill at the time of the attempted suicide since he considered an attempted suicide by a teenager as evidence of psychopathology, a mental disorder. He recognized, however, that many conditions, not derived from mental illness. could cause a suicide attempt and that the fact that prosecutrix may have been mentally ill on August 26, 1961. would not permit an opinion as to her mental condition at the date of the trial several months thereafter.

Aside from the evidence hereinbefore set forth, several affidavits were filed at the post conviction hearing. These affidavits, executed by acquaintances of Joyce Roberts, indicated that she was a sexually promiscuous girl.

While the primary question before us concerns the suppression of evidence we shall first dispose of the two questions decided adversely to the appellees as to which

they did not appeal; and the question relating to the taking of depositions in post conviction proceedings. The appellees contend they are entitled to have this Court consider the questions raised by them below as to the constitutionality of the Maryland Rule requiring motions for a new trial based on a newly discovered evidence to be filed within three days after verdict and the admission in evidence at the criminal trial of statements made by them when they were without counsel and not advised of their right to remain silent. Notwithstanding the fact that these claims were overruled by the lower court and no cross-appeal was taken therefrom, the appellees contend that they are entitled to have the judgment below affirmed for these reasons in addition to those assigned by the lower court. Although the question of whether a crossappeal need be taken appears to be a novel one in a proceeding of this nature, closely related rulings have been made supporting the appellees' position. It has been held that an appellant is not entitled to the reversal of a judgment favorable to the appellee, even though error was committed against the appellant below, where it appears from the record that a directed verdict in the appellee's favor should have been granted. Such rulings are predicated upon the theory that no ultimate prejudice is shown to the appellant if he could not recover in any event, even though he were granted a new trial. See Ragonese v. Hilferty, 231 Md. 520, 191 A.2d 422 (1963), and Texas Co. v. Washington B. & A. R. Co., 147 Md. 167, 175, 127 Atl. 752 (1925). Assuming, without deciding, therefore, that the appellees are entitled to reassert the contentions raised below, they lack substance for the reasons hereafter stated.

With respect to the constitutionality of Rule 567a, requiring motions for a new trial to be filed within three days of the date of the verdict, as made applicable to criminal cases by Rule 759a, this Court, in Giles v. State, stepra (231 Md.), ruled that a motion for a new trial in respect to the subject trial, not having been filed

within three days of the verdict as required by Rule 567 a, was for that reason properly denied by the lower court. In so ruling, it is implicit that the rule itself was a valid and constitutional procedural requirement. Although the rules of procedure authorize a motion for a new trial, we recently noted that in the absence of state constitutional or statutory requirements, due process does not guarantee one the right to file a motion for a new trial after conviction for a criminal offense. Brown v. State, 237 Md. 492, 498, 207 A.2d 103 (1965). There is no merit to the appellees' attack on the three day rule.

There is likewise no merit to the contention of the appellees that they had been denied their right to counsel by the admission of statements made when they were not represented by counsel and not affirmatively advised of their right to remain silent in violation of their right to due process. This same contention was raised in the recent case of Cowans v. State, 238 Md. 433, 209 A.2d 552 (1965), wherein we stated that we did not interpret the Supreme Court decisions in Gideon v. Wainwright, 372 U. S. 335 (1963), Massiah v. United States, 377 U.S. 201 (1964) and Escobedo v. Illinois, 378 U.S. 478 (1964), "as making an affirmative advising of an arrestee of his right to counsel, before the taking of a confession, a prerequisite to its admissibility (in a State prosecution) provided, of course, that the confession was freely and voluntarily given under the totality of the attendant circumstances, or that a failure to inform, explicitly, an arrestee of 'his right to remain silent' destroys the voluntariness of his confession and thereby renders it inadmissible." In adhering to this position, we hold that the lower court correctly refused to grant relief on the claim that the admission of statements made to the police was a violation of due process.

With respect to the authority of the appellees to take depositions in a proceeding of this nature, the lower court found that proceedings under the P.C.P.A. are civil in nature and that the rules relating to civil proceedings are applicable to them. The rules governing post conviction procedure are to be found in Rules BK40 through BK48 in Chapter 1100 titled "Special Proceedings" and not under Chapter 700 dealing with procedure in "Criminal Causes." And Rule 1000 titled "Special Proceedings -General Rules Applicable" provides that "the preceding Rules, Chapters 1, 100 to 600 inclusive and 800 are applicable to Special Proceedings dealt with in Chapter 1100, except insofar as the Rules contained in Chapter 1100 otherwise provide expressly or by necessary implication." Regardless therefore of whether the rules governing post conviction proceedings are civil in nature, there seems to be little doubt, since Rule 1000, providing that Chapter 400 (Depositions and Discovery) is applicable to Chapter 1100 (Special Proceedin), that the autherization to take depositions in post conviction proceedings was proper, and we so hold.

The principal question involved in the case at bar relates to the failure of the prosecution to turn over to the defense prior to the trial of the criminal case information it had pertaining to the alleged rape complaint arising out of the incident of August 26, 1961, and the attempted suicide. The court below found that this information could reasonably be considered admissible and useful to the defense and therefore the failure of the prosecution to disclose it, even though it may not have been withheld for an improper motive, amounted to a suppression of evidence in violation of the rights of the appellees to due process of law.

It is clear that the suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process and is ground for relief under the P.C.P.A. Brady v. State, 226 Md. 422, 174 A.2d 167 (1961), aff'd. 373 U.S. 83 (1963); Strosnider v. Warden, 228 Md. 563, 180 A.2d 854 (1962). The appellees contend that for the purpose of determining the applicability of the suppression rule, evidence is material if it could reasonably have been considered admissible and useful to

the defense regardless of whether it is technically admissible and useful in the sense that it contradicts trial evidence. The appellees rely on Griffin v. United States, 183 F.2d 990 (D.C. Cir. 1950), and Barbes v. Warden, 331 F.2d 842 (4th Cir. 1964), and further contend that if the Griffin admissible and useful test is met the withholding of evidence amounts to a denial of due process if the State had knowledge of the evidence and the defense did not.

While we agree that evidence which is claimed to have been suppressed must be reasonably considered to be admissible and useful before suppression may be said to exist, this is not the sole test in determining when a suppression of evidence can be said to amount to a denial of due process. Not only must the evidence withheld be admissible and useful, but it must be such, if it had been offered in evidence, as would be capable of clearing or tending to clear the accused of guilt — i.e., it must be exculpatory. For a definition of "exculpatory" see Dean v. State, 381 P.2d 178 (Okla. 1963).

Although the Circuit Court of Appeals in Griffin v. United States, supra, recognized the necessity of the prosecution disclosing evidence that "may reasonably be considered admissible and useful to the defense" under the facts of that case, it is clear that the undisclosed. evidence, which concerned threats of the victim toward the person accused of murder, was obviously material and exculpatory evidence to which a jury would attach significance. Likewise, in Barbee v. Warden, supra, which followed the reasonably admissible and useful language of Griffin, the evidence suppressed, which was a police department ballistics report to the effect that the gun found in the defendant's car and described by witnesses as similar to the one carried by him at the time of the shooting was not the gun used in the shooting, the nondisclosure was properly held to be a denial of due process in that the evidence was material and exculpatory to the accused. For holdings that the evidence suppressed must be material to the guilt or innocence of the accused or to the penalty to be imposed in order to constitute a denial of due process, see State v. Morris, 365 P.2d 668 (N.M. 1961) and Brady v. Maryland, 373 U.S. 83 (1963). In Brady, where the accused made a request for evidence that had not been disclosed, the Supreme Court held that the suppression of evidence by the prosecution favorable to an accused was violative of due process where the evidence was material either to guilt or to punishment.

We think that in order for the nondisclosure of evidence to amount to a denial of due process it must be such as is material and capable of clearing or tending to clear the accused of guilt or of substantially affecting the punishment to be imposed in addition to being such as could reasonably be considered admissible and useful to the defense. And, as pointed out in Barbee, in a situation involving passive nondisclosure an inquiry must be made into the question of whether the nondisclosure may have operated to the prejudice of the accused. Certainly there should be no duty on the prosecution to disclose evidence that is available to the accused or lacking in probative value, or, in some circumstances, evidence that is merely circumstantial. See Jordon v. Bondy, 114 F.2d 599 (D.C. Cir. 1940) and Butt v. Graham, 307 P.2d 892 (Utah 1957). See also Brady v. Maryland, supra, and 60 Colum. L. Rev. 858. The defense may be as well able to explore outside sources of information as the prosecution. United States v. Lawrenson, 298 F.2d 880 (4th Cir. 1962).

In order to decide what evidence can be said to have been suppressed it is first necessary to determine what the prosecution was charged with knowing. As was pointed out in *Barbes*, at p. 846, "the police are also part of the prosecution, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the non-disclosure." It would not be unreasonable therefore to charge the prosecutor and his agents who have the duty of preparing and presenting the case, with knowledge of all

seemingly pertinent facts related to the charge which are known to the police department who represent the local subdivision that has jurisdiction to try the case. Under this rule the State's Attorney for Montgomery County should be charged with knowledge of those facts known to the police department of that county. Thus all knowledge of Lt. Whalen pertaining to the prosecutrix would be chargeable to the State's Attorney. To go further would impose a practically impossible and unworkable burden on local authorities.

Applying the criteria above set forth to the facts of the case at bar, the strongest reasonable inference which the prosecution could conclude from the information known to it when considered in connection with other evidence in the case, would appear to be: that Joyce Roberts had probably been involved in some sexual activities with boys on the evening of August 26th under circumstances not amounting to criminal rape, on which her father preferred rape charges, but which investigation showed were groundless; that on the same evening she had intentionally taken an overdose of sleeping pills in an attempt to commit suicide and as a result had been admitted to a hospital; and that for reasons known only to her mother, the mother had taken her daughter to a psychiatrist.

As we see it, the prosecution should disclose to the defense such information as it has that may reasonably be considered admissible and useful to the defense in the sense that it is probably material and exculpatory, and where there is doubt as to what is admissible and useful for that purpose, the trial court should decide whether or not a duty to disclose exists. Assuming that there was reason for doubt on the part of the prosecution in this case as to whether the evidence known to it was reasonably admissible and useful as tending to affect guilt or punishment and that there was therefore a duty to disclose it, we think the failure of the prosecution to disclose the information relating to the alleged rape of August 26th and the subsequent suicidal attempt was not prejudicial to

the appellees and did not therefore warrant the granting of a new trial on the basis of the denial of due process. We shall first consider the attempted suicide, which the lower court found to be evidence of mental derangement and admissible for the purpose of impeaching the credibility of the prosecutrix.

The attempted suicide is said to be admissible and useful for purposes of showing that the prosecutrix was menc tally incompetent as a witness and for purposes of impeaching her credibility as a witness. The record, however, does not disclose any medical or other competent evidence to establish or even indicate that if the attempted suicide on August 26, 1961, had been known to the defense. together with all other facts and circumstances shown by the record, that such information could collectively consconstitute a legally sufficient basis upon which an opinion could be predicated that the prosecutrix was mentally incompetent as a witness on the date of the trial in December 1961, or that her testimony was not to be believed. Although the psychiatrist called by the appellees at the hearing below testified that an attempted suicide by a teenager was in his opinion evidence of mental illness, he stated that an attempted suicide on August 26, 1961, would not permit an opinion as to the mental condition of the prosecutrix at the date of the trial. As the testimony of the psychiatrist disclosed, an attempted suicide may resuit from causes not connected with mental illness. The State's Attorney for Montgomery County, when he first heard of the attempted suicide, believed it may have been related to the incident of July 20, 1961. Certainly it would not be unreasonable for a jury to conclude that an attempted suicide by a teenage girl was indicative of emotional disturbance caused by an attack upon her by three young colored males. Based on the evidence relating to the attempted suicide that was claimed to have been suppressed. there is nothing to indicate that the suicide attempt was material to the competency of the prosecutrix as a witness at the criminal trial or to the question of consent.

Neither the case of State v. Poolos, 85 S.E.2d 342 (N.C. 1955), nor Powell v. Wiman, 287 F.2d 275 (5th Cir. 1961), relied on by the appellees are persuasive on this point. The former case was one in which a question asked a witness for the state as to a prior attempt to commit suicide was said to be proper for purposes of impeachment. In the latter case, the prosecution knowingly suppressed evidence of the insanity of a witness and of a statement made by him to the police in contradiction of his testimony at the trial. Even if evidence in the case at bar as to the attempted suicide were admissible we do not think it would be material to the guilt of the appellees or the punishment to be imposed in light of the facts surrounding the attempted suicide which clearly showed that it was an outgrowth of an incident totally unrelated to the one for which the appellees were convicted of rape. Inasmuch as this evidence in no way showed the prosecutrix was mentally incompetent as a witness, or would have been in contradiction of any of the testimony given by her at the criminal triff, we find that its probative value was such as not to have been material to the credibility of the prosecutrix and therefore the failure of the prosecution to disclose such information did not amount to a denial of due process.

With respect to both the attempted suicide and the alleged false rape claim, it is important to note that we have held that specific acts of misconduct are not admissible to affect the credibility of a witness, for credibility must ordinarily be attacked by evidence of general reputation for, truth or veracity or material contradictory facts. Rau v. State, 133 Md. 613, 105 Atl. 867 (1919); Shartzer v. State, 63 Md. 149 (1885). With respect to the alleged rape claim as evidence of the prosecutrix general reputation for unchastity, the court below found that the appellees knew of the unchastity of the prosecutrix prior to the trial of the criminal case. Where consent is at issue, specific acts of intercourse with others prior to the alleged rape are not admissible to establish lack

of chastity. But evidence of general reputation for unchastity is admissible. See Giles v. State, 229 Md. 370, 183 A.2d 359 (1962); Humphreys v. State, 227 Md. 115, 175 A.2d 777 (1961); Shartzer v. State, supra. By the Gileses version of the incident of July 20, 1961, as related to their attorney, the defense certainly had some question as to the character of the prosecutrix which properly could have been investigated. In view of this and as evidenced by the examination of witnesses at the criminal trial, the defense must have known of the prosecutrix' general reputation for unchastity and that she was a sexually promiscuous girl. It is difficult therefore to see how evidence of the alleged rape claim would have added anything of consequence to what the defense already knew or should have known.

The court below, in relying on Smallwood v. Warden, 205 F.Supp. 325 (D. Md. 1962), was of the opinion that the rape claim was admissible for purposes of impeachment. but in that case, where the question was one of adequacy of counsel, the prosecution, unlike the case at bar, had knowledge of the history, physical condition and reputation of the prosecuting witness, all of which was said to have likely affected the result of the trial. While ev dence of a rape claim may be relevant when the basis for the claim is clearly lacking, the record here shows that the prosecutrix did not make a complaint and that she cannot therefore be said to have made a false rape claim. There was in this case no evidence from which a jury could have concluded that since a false rape claim was intentionally made by the prosecutrix on one occasion it raised considerable doubt as to the validity of the claim made against the appellees. However the incident of August 26th may be interpreted it permits of no conclusion that the prosecutrix made a false rape claim. The claim was made by her father after statements made by the prosecutrix to a boyfriend were communicated to him. While Joyce freely discussed the incident with Sgt. Wheeler she denied that any rape had occurred. Thus,

the only possible use of the facts surrounding the alleged rape claim would be for purposes of showing the unchastity of the prosecutrix, a fact that was already known to the defense at the time of the rape trial.

The appellees, however, argue that the subsequent rape claim goes to credibility and is material to the mental illness of the prosecutrix. It is their contention that evidence of her sexual promiscuity and of the alleged rape claim shows she is afflicted with nymphomania a type of mental illness. While evidence of nymphomania was held admissible in People v. Bastian, 47 N.W.2d 692 (Mich. 1951), to conclude that such an illness existed in the case at bar would be to engage in sheer speculation and conjecture. What the appellees would have us do is to take the facts presented at the post conviction hearing and to draw conclusions therefrom that are not supported by the record. Even if the prosecutrix can be said to have been suffering from nymphomania, there is nothing to show that this made her incompetent as a witness or that she consented to the acts for which the appellees were convicted.

Although the new trial was granted by the court below solely on the suppression of evidence relating to the alleged suicide attempt and alleged rape claim, both of which arose out of the incident of August 26th, the appellees also claim that evidence was suppressed as to the near probation status of the prosecutrix and as to the fact that her mother had taken her to see a psychiatrist. Without prolonging an already lengthy opinion in this case which the appellees seek to retry on an appeal by the State, it will suffice to say that there is nothing in the record to show a withholding of evidence with respect to either of these matters.

We hold that the evidence held by the lower court to have been suppressed was neither material to the guilt of the appellees or to the punishment to be imposed, nor was the failure to disclose prejudicial to the accused. The

nondisclosure, therefore, cannot be said to have amounted to a denial of due process.

ORDER REVERSED; THE APPELLEES TO PAY THE COSTS.

[Dissenting Opinion]

Oppenheimer, J. files the following dissenting opinion in which Hammond, J. concurs.

The evidence admittedly withheld by the State, in my opinion, could have been of vital importance to the defense of the accused and its withholding constituted a violation of due process of law.

The appellees' defense to the charge of rape was that their assault upon the white companion of the prosecutrix was provoked by his obscene racial remarks and that the prosecutrix not only consented to intercourse with two of the appellees but suggested it and invited it. The appellees testified that the prosecutrix, prior to any acts of intercourse, had said to them that she had already had sexual intercourse with sixteen or seventeen boys that week and two or three more wouldn't make any difference. The appellees also testified that the prosecutrix, while consenting to the intercourse, said that she was on probation and if caught by the police would have to claim that she was raped. This testimony was denied by the prosecutrix at the trial and obviously was not believed by the triers of fact who convicted the appellees.

The essential facts established at the post conviction hearing are not in dispute. Detective Lieutenant Whalen

In Giles v. State, 229 Md. 370, 183 A.2d 359 (1962), in affirming the appellees' convictions on appeal, we referred to the conflicting evidence as to consent. The complete transcript of the testimony at the trial was introduced in the hearing under the Post Conviction Procedure Act as a result of which Judge Moorman granted a new trial. The entire testimony at the criminal trial is therefore before us on this appeal.

of the Montgomery County Police Department, prior to the trial of the appellees, had received a call from the family of the prosecutrix stating that she had been raped by two men in August of 1961, which was about five weeks. after the acts for which the appellees were to be tried. The lieutenant had also received information that the prosecutrix had taken a number of sleeping pills and had been taken to the hospital. He had previously known that at one time the mother of the prosecutrix had taken her to see a psychiatrist. Upon receipt of the call as to the alleged rafe. Lieutenant Whalen told the prosecutrix's father to get in touch with the Prince George's County Police, since the alleged rape had taken place in that county. The State's Attorney for Montgomery County had also been informed before the trial of the appellees that a complaint had been made in Prince George's County that the prosecutrix had been raped by other persons after the acts for which the appellees had been charged and he was aware that the subsequent charge had been investigated and dropped. The State's Attorney had also been informed that the prosecutrix had been hospitalized for taking an overdose of drugs and assumed that she had done so intentionally. None of this information known by the police lieutenant and the State's Attorney was communicated to the court appointed counsel of the appellees prior to their trial and their counsel had no knowledge thereof.

In Brady v. State, 226 Md. 422, 174 A.2d 167 (1961), we held that the suppression or withholding by the State of material exculpatory to an accused is a violation of due process even if, as here, the withholding is not the result of guile. In that case, the State contended that the evidence withheld, which was an extra judicial confession or admission by a third party that he had committed the offense for which the defendant was tried, was not admissible. In delivering the opinion for the Court, Chief Judge Brune considered the authorities pro and con as to whether or not such a confession was admissible. With-

out coming to any conclusion as to its admissibility, Judge Brune said, for the Court:

"We think that Boblit's undisclosed confession might have been usable under any of the three rules stated in *Thomas*, which we have quoted above, and hence could not be regarded as inadmissible and unusable in any manner in Brady's defense."

Judge Brune's opinion goes on to say:

"There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. To apply the words of the Supreme Court of the United States in Griffin v. United States; 336 U.S. 704 at 708-709, quoted by the Court of Appeals of the District of Columbia Circuit in its opinion on remand of the case, above cited (183 F.2d at 992), it seems to us (as it did to the Court of Appeals of the District in Griffin) that it would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady.

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady." 220 Md. at 429-30.

In the words of the Court of Appeals in Griffin v. United States, "when there is substantial room for doubt, the prosecution is not to decide for the court what is admissible or for the defense what is useful."

In this case, the information withheld by the prosecution, in my opinion, would have been admissible, in whole or in part, on cross-examination of the prosecutrix and was clearly usable in the defense of the appellees. The lodging of a complaint of rape on behalf of the prosecutrix and the subsequent withdrawal of the complaint took place between the alleged offenses of the appellees and their trial. These facts could well have been used to support the claim of the appellees that the prosecutrix consented to intercourse with them and thereafter, as they said she had told them she might do, made an unjustified claim that she had been raped.

The withheld evidence of her attempted suicide might well have been used by counsel for the appellees to attack the credibility of the prosecutrix because of mental or emotional illness. While I have not been able to find a Maryland case deciding whether or not testimony of mental illness or emotional disturbance not amounting to insanity is admissible for the purpose of discrediting the prosecutrix in a sex case, there is authority elsewhere holding such evidence to be admissible. The suppressed information might also have been used by the appellees in an endeavor to show that the prosecutrix was a nymphomaniac.

² Taborsky v. State, 142 Conn. 619, 116 A.2d 433 (1955). See also United States v. Hiss, (D.C.S.D.N.Y. 1950), 88 F.Supp. 559. Contra. Garrett v. Alabama, 268 Ala. 299, 105 So.2d 541 (1958).

In People v. Bastian, 330 Mich. 457 (1951), it was held that on a trial for statutory rape the trial court was in error in sustaining an objection to a line of cross-examination which counsel for the defendant said would tend to establish that the prosecutrix was a sexual psycopath. The Supreme Court of Michigan held that the proffered testimony was relevant to the credibility of the prosecutrix, particularly if sufficient to indicate that she was a nymphomaniac. People v. Cowles, 246 Mich. 429, 224 N.W. 387 (1929) is to the same effect.

[&]quot;Occasionally is found in woman complainants, testifying to sex-offences by men, a dangerous form of abnormal mental-(footnote 3 continued)

As in Brady, the test is not whether the evidence clearly would have been admissible but whether it must be regarded as inadmissible and unusable in any manner in defense of the appellees. The question of actual admissibility, particularly in a case such as this, can only be passed upon in the context of actual cross-examination and proffered testimony. Such cross-examination and additional testimony might well have been admissible and, if admissible, were usable in the defense of the appellees. That is clearly sufficient.

The opinion of the majority holds that the information withheld by the State was not material evidence exculpatory to the appellees. With all deference, it seems to me that my brethren are arguing the weight of the evidence and put themselves in the place of the triers of the facts. While counsel for the appellees knew of prior acts of unchastity of the prosecutrix, the additional withheld evidence might have made possible a far more effective cross-examination than mere knowledge of prior acts of unchastity of itself permitted.

What has been said pertains only to the actual information known to and withheld by the State's Attorney and Lieutenant Whelan. However, this information, important as it was of itself to the defense, was also usable as the basis for further investigation. Although the prosecution did not choose to investigate further the information

⁽footnote 3 continued from preceding page)

ity, — dangerous here, because it affects testimonial trustworthiness while not affecting other mental operations. It consists in a disposition to fabricate irresponsibly charges of sex-offenses against persons totally innocent. The genesis and operations of this quality are sufficiently shown in the passages quoted onte 1924s (character for chastity). Sometimes it is associated with unchaste conduct in the witness, sometimes not. But its mature is well known to psychiatrists and is recognizable by them. Testimony to its existence in an individual should always be receivable." Wigmore on Evidence, 1934a (3rd ed. 1940).

which had been received, if that information had been made available to the appellees' counsel, it would have been a short and logical step for him to pursue what had happened in Prince George's County after the claim of the alleged rape had been made and after the prosecutrix had been hospitalized there. He could have easily ascertained the additional facts adduced at the post conviction hearing. These facts included the statements of the prosecutrix to Detective Sergeant Wheeler of the Prince George's County Police that during the preceding two vears she had had numerous acts of sexual intercouse with a large number of boys and men, many of whom were unknown to her, and that she had accused two men in the Prince George's County incident of rape to explain why she took the overdose of pills, although she also told Wheeler that she would refuse to testify against the two men if they were charged with rape. The hospital record of Prince George's General Hospital showed the diagnosis of attempted suicide by the prosecutrix and the admitting diagnosis of psychopathic personality. An interview with Dr. Connor, who testified in the post conviction hearing, would have readily shown that the prosecutrix had been confined in the hospital's psychiatric ward for nine days.

This additional information would have materially strengthened the usable lines of defense inherent in the information actually withheld by the prosecution. It seems clear to me that the facts which the State knew and did not communicate would have been helpful to counsel for the appellees in pursuing the new important lines of inquiry obviously indicated. The State can not claim the withheld information was unusable by the defense because the prosecution chose to know no more.

Testimony that a witness has been confined in a mental hospital has been held admissible on the issue of credibility. Walley v. State, 240 Miss. 136, 126 So.2d 534 (1961); People v. Kirkes (Cal. Dist. Ct. App. 1952) 243 P.2d 816.

The Brady and Griffin rule rests on basic principles of fairness. If information is withheld by the prosecution and if that information, although not pursued by the prosecution, of itself would have reasonably led to the procuring of information usable in any manner in the defense of the accused, that fact of itself should make the withholding of the uncommunicated matters the basis for a new trial. We are dealing here with capital charges. The appellees were represented by court appointed counsel who, however able and conscientious, could not have the facilities of investigation available to the State. The information withheld would have made the procuring of the further, and possibly vital, information easily obtainable.

The issue before us is not the guilt or the innocence of the appellees but whether, under all the circumstances, the withholding of the information by the State constituted a violation of due process. In my judgment, it clearly did. I would affirm the order of Judge Moorman granting a new trial.

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PUPREME COURT IN

FILE

FEB 20 1966

JOHN TOWNS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 37

JAMES V. GILES AND JOHN G. GILES,
Petitioners,

STATE OF MARYLAND.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

THOMAS B. FINAN,
Attorney General of Maryland,
Donald Needle,
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For Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1965

No. 642

JAMES V. GILES AND JOHN G. GILES,
Retitioners,

STATE OF MARYLAND.

Respondent.

ON PETITION FOR A WRIT OF CERTIONARE TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of Maryland (App. B of Petition) is reported at 239 Md. 458, 212 A. 2d 101.

JURISDICTION ...

The jurisdictional requisites are adequately set forth in the Petition

QUESTIONS PRESENTED

- 1. Whether petitioners were convicted in violation of the Fourteenth Amendment to the United States Constitution by reason of any suppression by the State of material exculpatory evidence?
- 2. Whether petitioners were denied due process of law in violation of the Fourteenth Amendment to the United States Constitution by reason of the fact that the Maryland courts have retained the power to determine the admissibility of evidence despite the Maryland doctrine that the jury is the judge of the law?
- 3. Whether petitioners were denied the right to assistance of counsel in violation of the Sixth and Fourteenth Amendments by introduction at their criminal trial, without objection, of admissions made by them which were voluntary in fact but made during police interrogation when petitioners did not request an opportunity to consult counsel?
- 4. Whether the due process clause of the Fourteenth Amendment guarantees one the right to file a motion for new trial after conviction for a criminal offense; and whether petitioners were denied due process under the then applicable, but subsequently amended, procedural rule which provided that new trial motions based on newly discovered evidence must be filed within three days after verdict?

STATUTES AND BULES INVOLVED

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The partinent provisions appear in the Petition at pp. 57-39 (App. A of Petition) with the exception of Rule 764 of the Maryland Rules of Procedure (1965 Cum. Supp.) which is set forth in Respondent's Appendix A, Infra.

STATIONERY

The case sought to be reviewed was brought under Maryland's Post Conviction Procedure Act, Maryland Code (1957), Cum. Supp. (1964), Article 27, Section 646A set forth in Appendix A of the Petition. Petitioners originally were convicted of rape in the Circuit Court for Montgomery County, Maryland, by a jury, on December 5, 1961. On December 11, 1961, the trial court (Judge James H. Pugh.) sentenced Petitioners to death. The convictions were affirmed by the Maryland Court of Appeals, Giles v. State, 229 Md. 370, 183 A. 2d 359, and an appeal to this Court was dismissed for want of a substantial federal question. Giles v. Maryland, 372 U.S. 767.

Subsequently, Petitioners moved in the trial court for a new trial on grounds of newly discovered evidence. The Motion was denied by the trial court, and the denial was affirmed in the Court of Appeals on May 6, 1963. Giles v. State, 231 Md. 387, 190 A. 2d 627.

On October 24, 1963, the Governor of Maryland, Honorable J. Millard Tawes, commuted Petitioners' sentences to life imprisonment. Then, on May 11, 1964, Petitioners filed in the trial court a Petition under the Post Conviction Procedure Act (R. 8-33), seeking to collaterally attack their convictions as having been procured in violation of the United States Constitution in several respects, of which the following claims survive: (a) that the State suppressed evidence in violation of the due process clause of the Fourteepth Amendment; (b) that Petitioners were denied due process because of the Maryland procedural rule requiring that new trial motions based on newly-discovered evidence be filed within three days after verdict prevented Petitioners from proving newly discovered evidence (R. 8); and (c) that Petitioners had been denied their right to the

assistance of counsel guaranteed by the Sixth and Four-teenth Amendments because of the introduction at the criminal trial of evidence of admissions made by them to police while under arrest and without counsel (R. 89-90). The trial court (Judge Walter H. Moorman) hearing the post conviction petition found that Petitioners had been denied due process under the Fourteenth Amendment by reason of the State's alleged suppression of evidence and ordered that Petitioners be accorded a new trial (R. 164). The Petitioners' other claims were rejected (R. 159-60). On appeal by the State, the Court of Appeals of Maryland reversed, holding that there had not been an unconstitutional suppression of evidence and agreeing with the rulings of the trial court that were adverse to Petitioners (R. 231-62, State v. Giles, 239 Md. 458, 212 A. 2d 101).

A. The Criminal Proceedings

On July 20, 1961, Joyce Roberts (age 16), her boy-friend, Stewart Foster (age 21), and two other young men, George Trent and William Fellows, drove in Trent's car to a secluded spot in Montgomery County near a dam on the Paturent River to go swimming, arriving between 11:00 P.M. and 11:30 P.M. By previous arrangement they were to meet several friends there, including one of Joyce Roberts' girl friends who was to bring Joyce's bathing suit with her (T. 71). Their friends failing to appear, the group started to leave and went a short distance when Trent's car ran out of gas. Joyce Roberts and Stewart Foster remained in the car while the other two young men set put to get gas. The area was thickly wooded, very dark, and desolate, the nearest residence being approximately one block away (T. 22).

References in this form are to pages of the transcript of testimony takes at the original trial of the case.

Shortly after the others departed, the stranded couple saw three young colored men (the Gileses and Joseph Johnson) appreaching the car. Foster became drightened, rolled up the car windows, and locked the doors. The trio demanded money and cigarettes, but Foster told them he had neither: The colored men then went to the rear of the car where one stated: "Let's drag his fucking as out of there and get some of that pussy" (T. 109). Other threats were made to drag Foster from the car and carnally know the girl. One or more of the intruders then threw rocks at the automobile, shattering the windows, and allowing them to reach in and unlock the doors. As this happened, Foster testified:

"I was so scared and I said, 'Joyce, make a run for it and I will hold them back as long as I can'" (T. 34).

Foster then jumped from the automobile to hold off the attack and was struck in the face with a rock and rendered unconscious. Joyce, at the same time, got out of the other side of the vehicle and fled into the woods. She had gone a short distance when she tripped and fell. Out of breath and unable to run further, she lay quiet in the thick underbrush trying to hide (T. 60).

Petitioners and Johnson then separated and sought Joyce in the woods. John Giles was the first to find her. According to the girl, he laid on top of her until the other two arrived (T. 61-62). She meanwhile pleaded with John Giles to let her go farther back into the woods so the other two couldn't find her, telling him that he could follow her later. As to this Joyce testified:

"I thought if I could get away from him, I could get get away from all of them" (T. 62).

Upon discovery by the other two, the men all leaned over her, began kissing her, and one reached for the zipper on Joyce related that the acts of intercourse were forcibly had against her will and without her consent. John Giles, on the other hand, denied having intercourse with the girl; and James Giles claimed he had intercourse with her consent.

According to John Giles, he followed the girl into the woods, although he claimed he did not at the time know that she was a female. He related that she "insisted" (T. 140) that they have intercourse, but he refused. He remained with her five or ten minutes in the woods before the others came.

According to James Giles, he went into the woods only to look for his brother, and not for the girl. Upon finding them, he claimed that the girl insisted upon intercourse. He did not know whether John had intercourse with the girl, after being found by the group, although admitting John spent about ten minutes with the girl while he stood about fifteen feet away (T. 195-196).

After regaining consciousness, Foster heard Joyce "whimpering" in the woods (T. 44). He made his way to the negrest home where the police were called Within minutes, at approximately 12:55 A.M., Sergeant Duvall

of the Montgomery County Police Department arrived on the scene. Petitioners and Johnson fled through the woods after seeing the headlights of the police car (T. 65). Joyce was found lying on the ground, naked for the most part, without shoes, sobbing, and in a semi-conscious state (T. 65, 93, 94). She was taken by ambulance to a hospital where examination revealed that she had abrasions of the skin over her shoulders, and on her knees and legs; and that secretions containing numerous spermatozoa cells were found in the vagina (T. 47-48), showing recent intercourse.

James Giles was arrested at his home the next morning having spent the night hiding in the woods (T. 113, 174). John Giles was arrested at a gas station on July 23rd, having spent most of the two intervening days hiding in the woods (T. 158). Joyce identified James Giles at a police line-up on July 21st, and John Giles at a line-up held on July 23rd, as two of the men who had assaulted her (T. 66).

In statements to the police following their arrest, James admitted that he had thrown rocks at the automobile; that he had chased Joyce into the woods; that he had argued with his brother as to who would be first to have intercourse with her; that he had intercourse last and was engaging in the act when the police car arrived. He further admitted that it might have been he who made the statement, "Let's drag his fucking ass out of there and get some of that pussy" (T. 108-113). John Giles, in his statement, admitted his presence at the crime scene; that he had chased the girl into the woods; but denied that he had intercourse with her (T. 118-119).

At the trial Petitioners related that the reason for breaking into the car was to prevent Foster, who they said had

a gun in the car, from shooting them. It was further related (T. 139, 151) that Joyce Roberts told the Petitioner that she was on probation and didn't want to get into trouble; but this was denied by the girl (T. 84-85). She also denied making any statement to the effect that she had had intercourse with numerous other boys that week and that a few more would not make any difference (T. 84), as had been urged by Petitioners.

The jury returned a verdict of guilty against each Petitioner without qualification as to sentence.

B. The Post-Conviction Proceedings

At the bearing in the post conviction proceeding held on July 20, 21, and 22, 1964, it was shown that after the Petitioners' arrest, an experienced member of the Montgomery County Bar, Stedman Prescott, Jr., was appointed by the court to represent them. He made an investigation of the case which included a discussion of the matter with the State's Attorney for Montgomery County and an examination of the entire file of the prosecution, including the police report. No other request for information or further: assistance of the State's Attorney was made. The trial did not take place until December, 1961, several months after the attorney's appointment, and ample time for preparation was allowed.

From his clients, the defense attorney learned of the facts surrounding the alleged consent of the prosecutrix and knew this would play a role in the defense. He was, however, unable to discuss the case personally with Joyce Roberts because of her mother's denial of such permission. Also, the attorney sought to examine records of the juvenile courts in Montgomery and Prince George's Counties, but was not allowed to see those regards by juvenile

authorities. Under Rule 922 of the Maryland Rules of Procedure, records may only be examined upon written permission of the court. Such permission was apparently not sought by defense counsel prior to trial.

SE.

The most important evidence presented at the post conviction hearing involved an alleged suicide attempt by the prosecutrix and an alleged false rape claim. About five weeks after the rapes by the Petitioners and Johnson, Joyce Roberts went to a party in Prince George's County, and upon entering a bathroom a boy followed her and had intercourse with her. Another boy had intercourse with her in the yard shortly thereafter (R. 30-32, 65-68, 238). Her physical resistance to these acts, if any, was slight, her main concern appearing to be that all of the boys at the party would find out and desire to have intercourse with her.

The following morning Joyce was admitted to Prince George's General Hospital having taken an overdose of Bufferin tablets and sleeping pills. These facts were brought out at the hearing by Sergeant Wheeler of the Prince George's County Police. The Sergeant had interviewed the prosecutrix in the hospital after he had received a complaint from Joyce's father that she had been raped at the party on August 26, 1961.

The father had gleaned his information from hearsay. Joyce had been visited in the hospital by a friend, Robert Bostic, who asked why she had taken the pills. Her answer was that she had been raped and that this was the reason for her actions. Bostic informed Joyce's mother of this without Joyce's knowledge. The prosecutrix's father then made a complaint of the alleged rape to Lieutenant Lloyd Whalen of the Montgomery County Police Department, who told Joyce's father to contact the Prince George's

County police, since the alleged rape had occurred in the latter county (R. 31-32, 60, 65-73, 237). Lieutenant Whalen made no investigation of the complaint nor of the facts concerning the overdose of pills taken by Joyce, of which he was also informed (R. 81, 237). Lieutenant Whalen was not informed that Joyce had attempted suicide and he did not have any information that she was mentally disturbed or ill, although he was aware that at one time Joyce's mother had taken her to see a psychiatrist (R. 236, 237, 82). Also, the Lieutenant made no investigation into the character of the prosecutrix (R. 79, 81, 84, 130, 133-134).

When the girl's father called the Prince George's County Police, Sergeant Wheeler visited the hospital. He did not then know that Joyce was the complainant in a rape case in Montgomery County. At the hospital, after relating the incident at the party of August 26th, Joyce stated to the Sergeant that she did not wish to make any complaint of rape and that she had not authorized anyone to make such a complaint for her. She further related that she would refuse to testify against the two boys if the matter was presend. Wheeler marked the Prince George's County police file "Closed and unfounded," with the consent of Joyce's father (R. 31-33, 60-72, 296-238). As to the reason for the girl being in the hospital, the Sergeant said that he may have been told that it was as a result of taking some kind of tablets, but he was not sure that he had been told this Joyce also related to Sergeant Wheeler that during the preceding two years she had engaged in numerous acts of intercourse with different persons, including one of the two boys with whom she engaged in intercourse at the party. Surgeant Wheeler was not interviewed by the State's The second second

The State's Attorney testified that although he knew prior to the trial that Joyce was hospitalized because of taking excessive drugs, he had no knowledge that the taking of drugs was a suicide attempt. He suspected that the drug incident might have been connected with the rapes on July 20, 1961 concerning the Petitioners. He had been informed of a rape charge in the other county involving Joyce Roberts, in which the charge was made by one other than Joyce, and he was aware that after investigation the charge was dropped as being without merit (R 246, 238, 157, 81, 133-134).

The State's Attorney was never given any information that Joyce Roberts was mentally or emotionally disturbed or anything that reflected upon her credibility. He also stated that at no time did he conceal any information from the court or jury which he thought was admissible, exculpatory evidence.

The records of the Prince George's General Hospital which were introduced at the post conviction hearing showed that Joyce had been admitted on August 27, 1961, following an overdose of pills in a suicide attempt, secondary to "adjustment reaction of adolescence." She was given an admitting diagnosis of psychopathic personality and placed in a psychiatric ward before discharge nine days later. The attending physician diagnosed the condition as an adolescent reaction.

A psychiatrist related that the girl was mentally ill at the time of the attempted suicide, since he considered a teen ager's attempted suicide as evidence of a mental disorder. He did state, however, that many conditions not derived from mental illness could cause an attempted suicide. He further related that he could not state an opinion as to the girl's mental condition at the date of the trial (R. 122-123).

Petitioners did not call the prosecutrix to testify at the post conviction hearing, although apparently she was available for such purpose. Other evidence, consisting of affidavits by acquaintances of the prosecutrix, was entered in the record indicating that she was a sexually promiseuous girl.

ARGUMENT

I.

The Information Known by the Prosecution Concerning Events Subsequent to the Date of the Crime and Relating to the Prosecutrix Was Not Material, Nor Was Any Failure to Disclose Such Information Projudicial to the Politioners

The Maryland Court of Appeals found that the Petitioners were not denied due process of law holding that the evidence claimed to have been suppressed (a) was neither material to the guilt of the Petitioners or to the punishment to be imposed, nor (b) was any failure to disclose information prejudicial to the accused (App. B. of Petition, at pp. 57-58).

There is no question but that if the State knowingly withholds material evidence exculpatory to an accused, it is a violation of due process, and such would be grounds for relief under Maryland's Post Conviction Procedure Act. Brady v. State, 226 Md. 422, 174 A. 2d 167 (1961), and 373 U.S. 83 (1963). Yet it must be recognized that in finding a violation of due process the State action must in finding a violation of due process the State action must be "beyond the line of tolerable imperfection" and fall into the field of fundamental unfairness. Curron v. Delaware, 250 F. 2d 707, 711, and Barbee of Warden, 331 F. 2d 842 (4th Ctr. 1964). No amount of eloquence or strained semantics, however, can convert the action of the State of Maryland in the case at bar, into action fundamentally unfair

or violative of due process of law, warranting review by this Court on certiorari.

Petitioners desire this Court to set forth a rule of law requiring the State prosecuting authorities to become cocounsel for the defense. They contend that any admissible and useful evidence withheld by the State amounts to a denial of due process if the State had knowledge and the defense did not. They seek a rule without limitation, one in which any evidence that may have an effect on the outcome of the trial shall be considered material, regardless of whether the evidence is technically admissible and useful in the sense that it contradicts trial evidence; regardless of whether the evidence would be capable of clearing or tending to clear the accused of guilt; regardless of whether it would be exculpatory; and regardless of whether an accused may be prejudiced in fact by the suppression. Such is not the intent of the suppression rule, and the cases make this clear. The rule set forth by the Maryland Court of Appeals is eminently correct.

First it must be obvious that in any criminal investigation, numerous bits, of evidence are accumulated. Many
of these are so innocuous that they are never used, others
are clearly immaterial. Much evidence is ferreted out by
the police before the matter is turned over to the State's
Attorney for prosecution. Every scintilla of proof need not
be given in the process. If the evidence is of such a nature
that it does not reasonably tend to either inculpate or exculpate, then failure of the police to relay such information cannot mount up to a denial of due process. The prosecution, by the same token, therefore, can not be legitimately
charged with all of the knowledge possessed by any State
official wherever located, or contained in any remote documents, having information relating to a State witness in a
criminal case without regard to the confection of such

The cases hold, as did the decision below, that for the purposes of the suppression doctrine the prosecution is charged with the material knowledge of the police officers and authorities investigating the particular crime. Barbee v. Warden, supra, Hall v. Warden, 222 Md. 590, 158 A. 2d 316. To make the prosecution chargeable with knowledge of the police of another county, as urged by Petitioners, would impose, as the Maryland Court of Appeals stated: "a practically impossible and unworkable burden on local authorities" (App. B of Petition, p. 53).

The Petitioners rely heavily on Griffin v. United States, 163 F. 2d 990 (D.C. Cir. 1950) and Barbee v. Warden, supra, in urging an expanded applicability of the suppression rule. The Circuit Court of Appeals in Griffin did state that the prosecution must disclose evidence that "may reasonably " be considered admissible or useful to the defense," but under the facts of the case it was clear that the undisclosed evidence, concerning threats of the victim toward the accused, was obviously material and exculpatory evidence. Also, the court was speaking in its supervisory role over the conduct of criminal trials in the federal courts, and its statement was not necessarily made so as to state a requirement of due process. Similarly, in Barbee v. Warden, supra, which followed the "ressonably admissible and useful" language of Griffin, the suppressed evidence was obviously erial and exculpatory. The undisclosed evidence there was a ballistics report to the effect that the gun found in the secused's car, and described in the trial as similar to the one carried by him was not in fact the gun used in the

In Bruily n. Maryland, supra, also relied on by Petitioners, the police purposely withheld a statement by one Boblis on defendant with Brudy, in which he admitted that he had in fact killed the victim. Without this statement to consider the jury returned an unqualified weedlet of first degree murder. There is little doubt that the statement would have entered into the jury's decision and of course the failure to produce it was found to amount to a denial of due process.

The situation here presented does not even remotely approach the unfair conduct in Brady, Barbee, or Grijfin. In the three cited cases the acts complained of were highly reprehensible. In Barbee, the suppressed evidence was exculpatory and there was more than a small possibility that it may have been enough to acquit the defendant that it may have been enough to acquit the defendant was highly material, if not to guilt or innocence, at least to the question of sentencing. In this case we have nothing but the highest degree of speculation that the evidence, if admissible, would have had any beneficial effect.

Before deciding what evidence can be said to have been suppressed, it must first be determined what the prosecution was chargeable with knowing. The Maryland Court of Appeals held the prosecution charged with knowledge of all "pertinent facts related to the charge known to the police department who represent the local subdivision that has jurisdiction to try the case" (App. B of Petition, at p. 53). This meant that the State's Attorney for Montgomery County was chargeable with knowledge of those facts known to the police department of that county. See United States v. Laurenson, 298 F. 2d 880 (4th Cir. 1962), where knowledge of the Washington office of the FBI was held not imputable to the members of the Baltimure office of the FBI.

What the prosecution in this case knew was that rape charges had been preferred by the father of Joyce Roberts.

which the prosecutrix denied making, and which investigation showed were groundless; that Joyce Roberts hadengaged in sexual activities with boys on August 26th, 1961, under circumstances not amounting to criminal rape; that she had taken an overdose of pills and was admitted to a hospital; and that her mother, in the past, had taken her daughter to a psychiatrist. There was doubt in the record is to whether the prosecution knew the overdose was intentionally taken and was a suicide attempt, but the Maryland Court of Appeals drew the "strongest reasonable inference which the prosecution could conclude from the information known to it" (App. B of Petition, at p. 53) and found the prosecution also chargeable with this knowledge. To hold that the prosecution went beyond the line of tolerable imperfection and was fundamentally unfair in this case, as claimed by Petitioners, would be to write into the Fourteenth Amendment of the Constitution an entirely new and unrestricted suppression rule. That such a requirement should spring from the facts of this case because of the alleged Suppression of an alleged rape claim where se prosecutrix in fact never made such a claim is unorthy. Even in those States where a false rape claim has en held admissible in evidence, the claim must in fact he made, and by the prosecutrix. 58 Am. Jur., Witnesses, 1682; Aunotation, 75 A.L.R. 2d 506, Impeachment or Cross-Examination of Prosecuting Witness in Sexual Offense Trial by Showing that Similar Charges Were Made Against Other Persons. The alleged suicide attempt was never in fact proven to be such. Not a single witness testified that the overdose of pills taken by the prosecutrix was in fact an attempted saicide or was so told by the prosecutrix. The hospital records are inconclusive. The failure of the Petitioners to have Joyce Roberts testify should not go unnoticed in this regard. She was, of course, the one

person who could testify as to whether she had in fact made a claim of rape and had in fact attempted to commit suicide.

Petitioners claim the attempted suicide would be admissible to show that the prosecutrix was mentally incompetent as a witness and to impeach her credibility. Yet, as the Court of Appeals pointed out, even if the defense had known of all the information later established, the record did not disclose a legally sufficient basis upon which an opinion could be predicated that she was either mentally incompetent on the date of trial or that her testimony was not to be believed. The psychiatrist called by the Petitioners stated that an attempted suicide on August 25, 1961 would not permit an opinion as to the mental condition of the prosecutrix on the date of trial in December, 1961, and that an attempted suicide may be caused by any number of factors not connected with mental illness. The procecutor thought that the incident may have been related to the rape in which the Petitioners were involved; and obviously it would not be unreasonable for a jury to so conclude.

In light of the fact that this evidence in no way mounted up to showing the prosecutrix was incompetent as a witness, or in any way would have contradicted any of her trial testimony, any suppression did not amount to a denial of due process.

Petitioners erroneously indicate (Petition, pp. 31-32) that the Maryland Court of Appeals held the evidence concerning the second rape accusation and attempted suicide admissible in evidence, and therefore argue that they were denied equal protection of the laws in view of Maryland's provision that the jury is the judge of both the law and the facts (Maryland Constitution, Article XV 15, App. A of Petition). They claim that the Maryland Court of Appeals substituted its appraisal of the exculpatory value

of the allegedly suppressed evidence for the jury's. The simple answer is that the Maryland Court of Appeals did not hold that such evidence was admissible in evidence. The Court pointed out that specific acts of misconduct are not admissible to affect the credibility of a witness in Maryland, for such must be attacked by evidence of general reputation for truth or veracity or material contradictory facts; and that when consent is at issue, only general reputation for unchastity is admissible in evidence, and specific acts of intercourse are not admissible to establish lack of chastity (App. B of Petition, at pp. 55-56). What the Court did state, which the Petitioners have misconstrued, is that even assuming the evidence was admissible, for the purposes of argument, it was not material as a matter of law, and failure to disclose any such evidence, admissible or not, did not amount to a denial of due process (App. B of Petition, p. 55 and p. 53). The Court then did not substitute its judgment for that of the jury, for despite the Maryland provision on the authority of the jury, supra, the courts have retained the power to determine the admissibility of evidence. See Brady v. Maryland, supra, where it was pointed out that "Maryland's constitutional provision making the jury in criminal cases 'the judges of Law' does not mean precisely what it seems to say," and that it is the court, not the jury, which passes on the admissibility of evidence. *

An analysis of the cases dealing with a denial of due process will show that the evidence or information suppressed in those cases was directly contrary to testimony on behalf of the State or directly supported testimony on behalf of the defense. The evidence here was not of this character and was not contradictory of any of the prosecuting witness trial testimony. This point is clearly brought home by those cases which deal with the suppres-

sion of svidence relating to credibility. In Napue v. Illinois, 360 U.S. 264, the improperly suppressed evidence concerned the promise of leniency to a witness who denied on the stand that he had been promised leniency. This case and other similar cases fall within the prohibition against the use of perjured testimony by the State. Other similar cases are Alcorta v. Texas, 355 U.S. 28 (1957); United States ex rel. Almeida v. Baldi, 195 F. 2d 815 (3rd Cir. 1958); Curran v. Delaware, supra; Powell v. Wiman, 287 F. 2d 275 (5th Cir. 1961); United States ex rel. Montgomery v. Ragan, 86 F. Supp. 382 (N.D. III. 1949); People v. Savvides, 1 N.Y. 2d 554, 136 N.E. 2d 853 (1956). It is also significant to note that in Griffin v. United States, supra; United States ex rel. Almeida v. Baldi, 195 F. 2d 815 (3rd Cir. 1952), cert. den. 345 U.S. 904 (1963); and United States ex rel. Thompson v. Dye, 221 F. 2d 763 (3rd Cir. 1955) cert. den. 350 U.S. 875 (1955) the prosecutor himself had full knowledge of the information that was withheld.

In the other cases the suppressed evidence directly concerned a point at issue in the case, such as in Barbee v. Warden, supra, where the suppressed evidence related to the gun of the defendant which was introduced in evidence. The court made it very clear that the suppressed evidence became important only when the gun was introduced when it said at p. 85:

"In our view, all of this evidence tending to exculpate the petitioner became highly relevant the instant his revolver was produced in open court, formally marked for identification, and witnesses interrogated about it... Once produced, it became not only appropriate but imperative that any additional evidence concerning the gun be made available either to substantiate or to refute the suggested inference." (Emphasis supplied).

In Griffin v. United States, sufra, the principal defense of the accused was that the deceased had attacked him and the evidence suppressed concerned an open knife in the pocket of the deceased. In Thompson v. Dye, supra, the defense in the case was that the accused was intoxicated. The prosecution called to the stand a police officer who testified truthfully that the defendant did not appear drunk to him, but did not call to the stand a policeman who would have testified that the defendant had appeared drunk when arrested. This case was made worse by the fact that the prosecution after receiving the testimony of the police officer as to drunkenness stated that there were other police officers who would testify to the same effect, but that they would not be called. In Brady v. State, supra, the State had in its possession a confession of an accomplice of the accused who admitted that he had committed the actual murder of the victim, which was the contention of Brady.

The Petitioners would make it appear that they were simply without knowledge as to the character of the prosecutrix. Quite to the contrary, however, a most cursory reading of the transcript of the original trial reveals an obvious awareness by the defense of the unchastity of the prosecutrix and of her general reputation for such. The lower court which heard the post conviction evidence made this obvious observation concerning the prior knowledge of the defense, as did the Court of Appeals. Defense knowledge was manifest not only in the Petitioners' own triel testimony but in the penetrating cross examination of the prosecutrix. As has been many times stated, the defense may be as well able to explore outside sources of informa-. tion as the prosecution. See e.g. United States v. Laurenson. supra. In Maryland, where consent is at lame, specific acts of intercourse with others are not admissible to establish

lack of chastity; but evidence of general reputation for unchastity is admissible. Humphreys v. State, 227 Md. 115, 175 A. 2d 777 (1961); Schartzer v. State, 63 Md. 149 (1885). Knowledge of the August 26th events certainly would not have added anything to what the defense already knew about the general reputation for unchastity of the prosecutrix.

Furthermore, the alleged rape claim would not be available for the purposes of impeachment, for the record here shows that the prosecutrix did not make a complaint at all, much less a false rape claim. There is no basis upon which it can be argued that a jury could conclude that since a false rape claim was made by the prosecutrix on August 26th she also may have made an invalid claim against Petitioners. The simple fact is that the prosecutrix made no false rape claim about the August 26th incident — it being made by her father and denied unequivocally by the girl. Nor did she make any false rape claim against the Petitioners. The only possible use the defense could make of the facts surrounding the incident of the alleged false rape claim would be to show what the defense already knew, that the prosecutrix was unchaste.

Petitioners now argue farther that the evidence of the alleged rape claim and her sexual promiscuity show the prosecutrix is afflicted with nymphomania, and may be admissible on that ground, citing People v. Bastian, 330 Mich. 457, 47 N.W. 2d 692 (1951). The simple answer to this, as stated by the Maryland Court of Appeals, is that the record is devoid of facts from which such a conclusion could be drawn; and, even assuming that the prosecutrix may be said to be suffering from nymphomania, there is nothing in the record to show either that she consented to the acts of the Petitioners because of this or that she was thereby rendered incompetent as a witness.

Similarly, the Petitioners' claim concerning "near probation status" of the prosecutrix, determined adversely to the Petitioners in both the Court of Appeals and the post conviction trial court, is devoid of merit, there being nothing in the record to show a withholding of evidence concerning this matter, even assuming, for argument purposes, it to be significant.

Finally, as to the rather melodramatic plea set forth in the Petition, the words of Judge Learned Hand in United States v. Garsson, 291 Fed. 646, 649, are appropriate:

"... Under our criminal procedure the accused has every advantage. While the prosecution is held rigidly to the charge, he need not disclose the barest outline of his defense. He is immune from question or comment on his silence; he cannot be convicted when there is the least fair doubt in the minds of any one of the twelve. Why in addition should he in advance have the whole evidence against him to pick over at his leisure, and make his defense, fairly or foully. I have never been able to see. No doubt grand juries err and indictments are calamities to honest men, but we must work with human beings and we can correct such errors only at too large a price. Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime"

Despite the rather unnecessary, uncomplimentary, and perhaps acrimonious remarks directed in the Petition to the Montgomery County State's Attorney and his alleged breach of duty it seems that the Petitioners have overlooked the basic fact that the State's Attorney birned over his entire file to defense counsel for close scrutiny, and that in that file lay the name of Lt. Lloyd Whalen of the

Montgomery County police, the man in charge of the investigation of the case; the man who received the original telephone call from the father of the prosecutrix concerning the matter now allegedly suppressed; the man available for questioning by the defense; and the man who was apparently not questioned by defense counsel prior to trial.

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Petitioners Are Not Entitled to Relief Under the Decision in Escobello v. Illinois.

Petitioners' convictions were affirmed on appeal by the Court of Appeals of Maryland on July 18, 1962, and this Court dismissed their appeals for want of a substantial federal question on April 22, 1963. (229 Md. 370, 183 A. 2d 359; and 372 U.S. 767). The convictions, therefore, had become final long before the decision in Escobedo v. Illinois, 378 U.S. 478, decided June 22, 1964. Respondent believes that the Escobedo decision was not intended to be retroactive, and should not be so applied in this case. Escobedo has most recently been held not to be retroactive in United States ex rel. Waldes v. Pate, 350 F. 2d 240 (7th Cir. 1965); Carrizosa v. Wilson, 244 F. Supp. 120 (N.D. Cal. 1965); United States ex rel. Conroy v. Pate, 240 F. Supp. 237 (N.D. III. 1965); In re Lopez, 42 Cal. Rptr. 188, 398 P. 2d 380 (1965); State v. Johnson, 43 N.J. 572, 206 A. 2d 737 (1965); Wade v. Yeager, 245 F. Supp. 67 (D.N.J. 1965); Hyde v. State, 240 Md. 661, 215 A. 2d 145 (1965); Bell v. State, 175 So. 2d 80 (Fla. Dist. Ct. App. 1985); People v. Hornanian, 22 A.D. 2d 686, 253 N.Y.S. 2d 241 (1964).

Especially in light of Linkletter v. Walker, 381 U.S. 618 (1965), American it was announced that the rule established in Mapp v. Ohio, 367 U.S. 643, did not operate retrospectively upon convictions finally decided prior to Mapp, the Ercobedo case abould not be retroscrive in application.

In United States ex rel. Walden v. Pate, supra, the court considered a habeau corpus petition of a prisoner whose conviction became final in 1980 in a case in which the court found he had been denied access to counsel and had not been advised of his right to remain silent before he confessed. The court there said:

"The Supreme Court has determined the question of prospective or retrospective operation of a new constitutional rule upon the basis of the purpose of the rule. Where the rule in question goes to the fairness of the trial, 'the very integrity of the fact-finding process,' as the Supreme Court said in Linkletter, refrospective application is called for, since doubt is cast on the question of the defendant's guilt. In both Escobedo and Mapp, however, the reliability of the evidence was not questioned; the attack was on admissibility of the evidence because it was obtained in violation of a fundamental constitutional right. As Mr. Justice White pointed out in dissent in Escobedo, 'Escobedo's statements were not compelled and the Court does not hold that they were.' 378 U.S. at 498.

"Nothing expressed in either the Mapp or Escobedo opinion required retrospective application of the rule announced. The purpose of the Mapp and Escobedo rules is the deterrence of abuses by law enforcement officers. Experience had shown that the only effective means of enforcing compliance with the Fourth Amendment's prohibition against illegal searches and seizures was to render all evidence thus obtained instinuable, and in Mapp the Supreme Court took that step. Escobedo was likewise the culmination of long experience with cases involving defendants who had been held and gave confessions without assistance of counsel. The administration of justice suffered from the difficulties for the trier of fact and for courts of review of determining from the conflicting testimony of the interested parties whether a confession was or was not voluntary; and a condition existed where ignorance of countilitational rights and absence of countilitational rights.

sel operated to the prejudice of persons in custody. In order to put an end to a system so fraught with potential abuses, the Supreme Court in Escobedo decided to remove the incentive to deny an accused the right to counsel by rendering inadmissible any confession obtained while such denial was in effect. It is because of the similarity of purposes that we, as the Supreme Court did with the Mapp rule in Linkletter v. Walker, hold that the rule of Escobedo does not apply retrospectively." (350 F. 2d 240, at 242-243).

Respondent respectfully urges that regardless of the theory, Escobedo should not be given retroactive application.

Furthermore, assuming arguendo, that reproactive application is to be given Escobedo, the Petitioners' confessions are not rendered inadmissible by that decision and there is no significant issue here presented upon which this Court should grant certiorari. Far more was involved in the circumstances of Escobedo in which this Court granted certiorari, and eventually reversed the conviction than are here presented.

Danny Escobedo was arrested on January 30, 1980, eleven days after his brother-in-law was fatally shot. Prior to his arrest he had retained the services of an attorney, and that attorney arrived at police headquarters shortly after the petitioner himself reached there. The attorney asked the desk sergeant for permission to speak to his client and was told that he could not see him. He then asked several homicide detectives to permit him to see his client and was again refused. He made the same request to the police chief, renewed it again, and was again denied. Escobedo himself had repeatedly asked to speak to his lawyer and was advised by police officers that his lawyer did not want to see him. He was not advised of his rights. Both

before and during the trial he moved to suppress the incriminating statement he had given. The facts of the instant case are in no way comparable, and it is also noted that no objection whatsoever to the admissibility of Petitioners' statements was made in the trial court, and still no claim is made that the statements were involuntary in fact.

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The Maryland Procedural Rule Which Required New Trial Motions, Based Upon Newly Discovered Evidence To Be Filed Within Three Days After Verdict Was Not Violative of Due Process and the Question Is Now Moot.

Petitioners contend that under Rules 567a and 759a of the Maryland Rules of Procedure (App. A of Petition) newly discovered evidence is not available as a ground for setting aside a conviction unless a new trial motion is filed within three days after verdict. Such claim is now most under Maryland Rule 764 (App. A, infra), effective September 1, 1965. Under Maryland Rule 764, Section b, subsection 2, a new trial on the ground of newly discovered evidence which by due diligence could not have been discovered within three days after verdict may be granted if a motion is filed within ninety days after the imposition of sentence or within ninety days after receipt by the trial court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of appeal.

In any event, regardless of any procedural time limit, this Court has held that there is no constitutional right to a new trial based upon newly discovered evidence. In Tournsend v. Schn, 272 U.S. 293 (1963) at p. 317 it was said:

"The existence merely of newly discovered evidence relevant to the guilt of a State prisoner is not a ground for relief on federal babeas corpus."

Such a statement could not have been made if due process required a new trial on newly discovered evidence. Petitioners cite no case in support of their proposition that it is a violation of due process for them to continue to serve life imprisonment when their innocence is demonstrable in court, for one simple reason, no case has ever held due process imposes such a requirement. See Brown v. State, 237 Md, 492, 498, 207 A. 2d 103 (1965) where it is pointed out that due process does not guarantee one the right to file a motion for a new trial after conviction for a criminal offense; and Griffin v. Illinois, 351 U.S. 12, 18 (1956), stating there is no flue process right even to an appeal. Also see Cobb v. Hunter, 167 F. 2d 888 (10th Cir. 1958). has a period of ninery this days affine the sectors.

CONCLUSION

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For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

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For Respondent

APPENDIX A

STATUTES AND RULES INVOLVED

Rule 764* of the Maryland Rules of Procedure (1965 Cum. Supp.) provides:

"Rule 764. Revisory Power of Court.

"a. Illegal Sentence.

"The court may correct an illegal sentence at any time.

"b. Modification or Reduction - Time for.

"1. Generally.

"For a period of ninety (90) days after the imposition of a sentence, or within ninety (90) days after receipt by the court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of appeal, or thereafter, pursuant to motion filed within such period, the court shall have revisory power and control over the judgment or other judicial act forming a part of the proceedings. The court may, pursuant to this section, modify or reduce, but shall not increase the length of a sentence. After the expiration of such period, the court shall have such revisory power and control only in case of fraud, mistake or irregularity.

"2. Newly Discovered Evidence.

"The court may, pursuant to a motion filed within the time set forth in subsection 1 of this section, grant a new trial or other appropriate relief on the ground of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under section a of Rule 759 (Motion after Verdict)."

^{*} Rule 764 is included in Chapter 700, entitled "Criminal Causes." Subsection 2 to section b was added by a 1965 amendment, effective September 1, 1965.

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BUPREME COURT. U. S.

IN THE

Supreme Court of the United

OCTOBER TERM, 1966

Office Supreme Court, U.S. FILED

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STATE CLEU

NO. 27

JAMES V. GILES and JOHN G. GILES,

Petitioners.

STATE OF MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

NO. 27

JAMES V. GILES and JOHN G. GILES,

Petitioners.

STATE OF MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (R. 292-315) is reported at 239 Md. 458, 212 A.2d 101, sub nom. State v. Giles. The opinion of the Circuit Court for Montgomery County, Maryland (R. 281-292), has not been reported.

JURISDICTION

The judgment of the Court of Appeals of Maryland is dated and was filed on July 13, 1965 (R. 292, 308). The petition for certiorari was filed on October 4, 1965, and was granted on March 21, 1966 (R. 316). The Court has jurisdiction under 28 U.S. Code 5 1257(3), petitioners

claiming rights, privileges and immunities under the Constitution of the United States.

STATUTES AND RULES INVOLVED

The pertinent provisions of the Maryland Constitution, statutes and rules appear in the Appendix, infra.

QUESTIONS PRESENTED

- 1. Whether petitioners were convicted in violation of the due process clause of the Fourteenth Amendment of the United States Constitution by reason of the State's suppression of material exculpatory evidence.
- 2. Whether, in holding that petitioners were not denied due process by State suppression of exculpatory evidence, the Court of Appeals of Maryland applied erroneous principles with respect to three elements of the suppression doctrine—materiality, prosecution knowledge, and absence of defense knowledge.
- 3. Whether, in view of Maryland's unique doctrine that the jury is the judge of the law, the Court of Appeals denied petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment by denying relief on the ground that certain of the suppressed evidence, though it concededly "could reasonably be considered admissible and useful to the defense," did not have sufficient exculpatory value.
- 4. Whether petitioners were deprived of due process of law by application of the Maryland rule that new trial motions based on newly discovered evidence must be filed within three days after verdict.

In view of the holding on non-retroactivity of Johnson v. New Jersey, No. 762, Oct. Term 1965, decided June 20, 1966, we are compelled to abandon the additional question raised in the petition for certification concerning receipt at the criminal trial of admissions obtained from petitioners by police interrogation while they were in custody.

STATEMENT OF THE CASE

The judgment under review is the culmination of a proceeding brought under Maryland's statutory substitute for habeas corpus, the Post Conviction Procedure Act, Md. Laws 1959, c. 429, infra, Appendix A. Petitioners were convicted of rape in the Circuit Court for Montgomery County, Maryland. After exhausting all appeals, and after commutation of their death sentences to life imprisonment. petitioners filed a petition under that Act alleging that their convictions had been unconstitutionally procured (R. 1-27). Following an evidentiary hearing, the Circuit Court for Montgomery County ordered a new trial on the ground that petitioners had been denied due process of law under the Fourteenth Amendment by reason of the State's suppression at their criminal trial of material exculpatory evidence (R. 291-92). The Court of Appeals of Maryland. sitting en banc, reversed, two judges dissenting (R. 292-315). 239 Md. 458, 212 A.2d 101.

. A. The criminal proceedings. 2

Petitioners are brothers, aged twenty-two and twenty, respectively, at the time of trial in December 1961 (R. 101, 120). Because of their indigency petitioners were represented at the criminal trial by court-appointed counsel (R. 295). Petitioners are Negroes. The alleged victim, Joyce Roberts, was a sixteen-year-old white girl. The jury was all white. (R. 50, 52, 153.) Petitioners' defense was that the girl had solicited sexual intercourse (R. 210, 283).

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² The transcript of the criminal trial (R. 29-157) was admitted in the post-conviction hearing as Petitioners' Exhibit 1 (R. 157-58).

Maryland has two statutory "ages of consent" – fourteen for the purposes of a felony prosecution, sixteen for a misdemeanor. Md. Code (1957) Art. 27, \$1 462, 464. Sexual intercourse with the prosecutrix was admitted by James Giles (R. 125) and denied by John Giles (R. 104-05).

The evidence at the criminal trial may be summarized as follows:

On the night of July 20, 1961, Joyce Roberts, aged sixteen, accompanied by three men, rode by automobile into woods along the Patuxent River in Montgomery County, Maryland. The car ran out of gas, and two of the men left, léaving Joyce and Stewart Foster in the stalled car. (R. 50-51.)

John Giles, James Giles, Joseph Johnson and John Bowie were fishing and swimming in the river. When they finished, they guided Bowie's car, parked at the river, past Foster's car, and Bowie drove off. (R. 29-30, 35, 51-52, 102-03.) Johnson asked Foster for a cigarette (R. 36, 53, 103, 121, 122). Foster and Joyce Roberts testified that the three young Negroes demanded his money and the girl and threatened him (R. 36, 53). The Giles brothers testified that Foster called them obscene racist names without provocation (R. 103, 122, 131, 133) and leaned down as if reaching for a weapon (R. 104, 122, 134).

James Giles or Johnson or both threw rocks or stones at the car (R. 37, 53, 104, 122). Joyce Roberts left the car and ran into the woods for a distance of thirty feet, where, she testified, she stopped because she fell and was out of breath (R. 53-54, 66). Foster got out of the car, was knocked down by Johnson, and ran off to a nearby home, from which an occupant called the police (R. 37, 123).

While the altercation was still going on at the car, John Giles took a path into the woods and came upon Joyce Rob-

Johnson did not testify at petitioners' trial. He was also indicted for rape, but his case was severed and transferred to Ame Arundel County. Johnson was convicted and sentenced to death. Johnson v. State, 232 Md. 199, 192 A.2d 506. The sentence was commuted by the Governor to life imprisonment at the same time as the commutation of petitioners' sentences. A post-conviction petition filed for Johnson is being held in abeyance pending disposition of the present case.

erts (R. 104, 54). They stayed together and conversed for five to ten minutes according to Joyce, for fifteen to twenty minutes according to John Giles (R. 55, 66, 104-05). According to both Joyce and John Giles, she offered him sexual intercourse if he helped her get away (R. 66, 104).

James Giles and Johnson left the car, entered the woods, and came upon Joyce and John Giles (R. 124). According to the Giles brothers (R. 105, 115, 124), but contrary to Joyce's testimony (R. 55), Joyce called to James Giles and Johnson when they approached.

According to Joyce's testimony, the three men "leaned around" and were kissing her. "One of the boys reached for the zipper in my shorts and I said 'No' and one of them said 'Either you do it or we will do it' and so I said 'I will' and I took my shorts and underpants off." The three men then had sexual intercourse with her. Joyce did not call out, resist, or remonstrate. She testified that she had the intercourse because she was afraid. (R. 55-56, 64, 66, 71.)

According to the testimony of the Giles brothers, Joyce urged them and Johnson to have intercourse with her. James Giles and Johnson accepted the invitation, John Giles did not and left the scene before James Giles and Johnson engaged in intercourse. Joyce removed her clothes entirely on her own volition. She was not threatened or held. She directed the order in which the men should have intercourse with her and assisted them. She told them that she had had sexual intercourse with sixteen or seventeen boys that week, and two or three more wouldn't make any difference. (R. 104-05, 112, 115-16, 124-27, 141, 144.) Joyce denied making such a statement (R. 69).

John Giles testified that when he and Joyce were alone in the woods together she told him that she was on a year's probation and didn't want to get into any trouble (R. 104, 112, 113). He also testified that after James Giles and Johnson had joined them, Joyce said "something about

she was on probation" and couldn't afford to be caught in the woods, not even with her boy friend, and if she we're caught she would have to charge rape (R. 105). James Giles testified that while he was having intercourse with Joyce she said she was in trouble and couldn't afford to be caught and that if she were caught in the woods she would have to sayshe was raped; she did not refer to "probation" in his hearing (R. 127, 140, 146).

On cross-examination, Joyce denied that she had said that she was on probation and if caught by the police would have to tell them that she was raped (R. 69). On redirect examination by the State, she testified that she had not been on probation at the time of the episode (R. 70). On cross-examination of John Giles, the State's Attorney ridiculed his testimony about the probation. Thus the State's Attorney asked: "So you were on probation and she was on probation and so you just sat down and talked?" "What did you talk about when you two probationers sat down?" "How long were you in this woods, with that probationer, when somebody found you?" (R. 114.)

A physician who examined Joyce immediately after the event testified to finding evidence of sexual intercourse. He gave no testimony indicating forcible penetration. (R. 45.)

James Giles and Johnson were arrested on July 21, 1961 (R. 80-81), and John Giles on July 23, 1961 (R. 82). Under questioning by the police, John Giles denied having had intercourse with Joyce (R. 92), and James Giles said that the girl had volunteered to have intercourse (R. 95) and had assisted him (R. 126-27).

The jury returned a verdict of guilty against each petitioner on December 5, 1961 (R. 164, 120). On December 11, 1961, the trial court (Judge Sames H. Pugh) sentenced petitioners to death (R. 156-57, 154).

The convictions were affirmed by the Maryland Court

of Appeals on July 18, 1962 (Giles v. State, 229 Md. 370, 183 A.2d 359; R. 281), and an appeal to this Court was dismissed for want of a substantial federal question. Giles v. Maryland, 372 U.S. 767.

A motion for a new trial on grounds of newly-discovered evidence was made and denied as untimely, and the denial was affirmed by the Court of Appeals (R. 281; Giles v. State, 231 Md. 387, 190 A.2d 627; see infra, p. 13). On October 24, 1963, Governor J. Millard Tawes commuted petitioners' sentences to life imprisonment (R. 281).

B. The post-conviction proceeding.

On May 11, 1964, petitioners filed in the Circuit Court for Montgomery County a petition, supported by numerous affidavits and other exhibits, seeking to set aside their convictions under the Post Conviction Procedure Act (R. 1-27). The petition alleged various violations of the due process clause of the Fourteenth Amendment, of which there survive claims that the State had suppressed material exculpatory evidence and that Maryland procedural rules unreasonably precluded petitioners from obtaining a new trial on the basis of newly-discovered evidence.

On November 10, 1964, following an evidentiary hearing (R. 157-280), the trial court (Judge Walter H. Moorman) found that petitioners had been denied due process under the Fourteenth Amendment by reason of the State's suppression of evidence and ordered that petitioners be accorded a new trial (R. 29)-92). Other claims made by petitioners were denied (R. 289-91). On appeal by the State, the Court of Appeals of Maryland, two judges dissenting, reversed, holding that there had not been an unconstitutional suppression of evidence and agreeing with the rulings of the trial court that were adverse to petitioners (R. 292-315). 239 Md. 458, 212 A.2d 101.

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1. The claimed suppression of evidence.

The evidence claimed to have been suppressed falls into two categories: (a) certain incidents which occurred between the date of the alleged rape (July 20, 1961) and the beginning of petitioners' criminal trial (December 4, 1961), and (b) what we call Joyce Roberts' "near-probation status." We next state separately the evidence adduced at the post-conviction proceeding relevant to each category and the holding below with respect thereto.

(a) The incidents following the alleged rape.

On the night of August 26, 1961, Joyce Roberts attended a party in Edmonston, Prince George's County, Maryland. There she had sexual intercourse with one man in the bathroom and with another in the yard outside the house. (R. 23-27, 182-84, 296.)

In the early morning of August 27, 1961, Joyce took a large overdose of pills. She was placed in the psychiatric ward of Prince George's General Hospital for ten days, the hospital record showing a diagnosis of attempted suicide and psychopathic personality and that her chief complaint was "Don't want to live." (R. 296, 24, 162, 167-69, 179, 218, 238, 279-80, 284-85.)

While in the hospital, Joyce was visited by a friend, Robert Bostic. Joyce told him that she had taken the overdose of pills because she had been raped at the August 26 party by the two men with whom she had had intercourse that night. Bostic relayed this information to Joyce's mother, and a formal complaint of rape against the two men was lodged with the police by Joyce's father. (R. 23-27, 179, 184, 192, 284-85, 296.)

As a result of the complaint, Detective Sergeant Wheeler, of the Prince George's County police, visited Joyce Roberts on September 1, 1961, in the psychiatric, ward of the hospital. Joyce first told Wheeler that the two men at the party had had sexual relations with her against

her will. When Wheeler questioned her further, she admitted that she had offered only token resistance to the first man - merely removing his hands from her body several times - and no resistance at all to the other man, and that no threats had been made to her. Wheeler that she had been reluctant at that time to have intercourse with the two men only because she thought that if she did so, they would tell the other boys at the party and all of them would want to have intercourse with her Were it not for this apprehension, she said, she would willingly have had intercourse with both men. Joyce also told Wheeler that she had voluntarily engaged in sexual intercourse in the past with one of the two men. She further admitted that during the preceding two years she had had numerous acts of sexual intercourse with a large number of boys and men, many of whom were unknown to her, and that she had engaged in oral sodomy on many occasions. When asked by Wheeler why she had accused the two men of rape, she said that she had told Bostic this to explain why she took the overdose of pills. She also told Wheeler that she would refuse to testify against the two men if they were charged with rape. Wheeler marked the police file "closed unfounded." (R. 25-27, 179-85, 189-92, 296-97.)

Soon after September 1, 1961, Wheeler learned that
Joyce Roberts was involved in a rape case in Montgomery
County (R. 188). He was not interviewed by the State's
Attorney or police of Montgomery County (R. 191). Since
neither the State's Attorney nor the police lieutenant in
charge of the investigation in Montgomery County knew
of the facts obtained by Wheeler (R. 198-200, 252-54), it
is clear that Wheeler did not communicate his information
to the Montgomery County authorities.

At the post conviction hearing, petitioners introduced psychiatric testimony that an attempted suicide by a sixteen-year old girl is a strong indication of serious mental illness (R. 237-43).

Petitioners also introduced at the post-conviction hearing testimony by John Patrick Stephens, a friend of Joyce Roberts, that on the Saturday night before her alleged rape by petitioners (on Thursday, July 20, 1961), she told him that on the preceding weekend she had gone to a party in Baltimore where she was the only girl, that there were about sixteen boys there, and she had had relations with all of them. The testimony was stricken on objection of the State (R. 160-61).

The Court of Appeals held that for the purposes of the suppression doctrine, the prosecution was charged with knowledge of the Montgomery County police, as well as with knowledge of the prosecutors themselves (in Maryland, the State's Attorney for the particular county and his assistants), but not with knowledge of the police of other counties (R. 303).

Detective Lieutenant Whalen of the Montgomery County police was in charge of the police investigation of the alleged rape of Joyce Roberts by petitioners and Johnson (R. 195). As was found below (R. 303-04), Whalen and Leonard T. Kardy, the State's Attorney for Montgomery County, knew, prior to petitioners' criminal trial, that Joyce had attempted suicide (R. 189-99, 251-52). As also found below (R. 303-04, 296, 297), both Whalen and the State's Attorney learned, prior to petitioners' trial, that Joyce had allegedly been raped again; and the State's Attorney knew that there had been no prosecution for this second alleged rape (R. 199-200, 252-53). Whalen also knew that Joyce's mother had taken her to see a psychiatrist (R. 297, 200-01). When Joyce's family told Whalen that Joyce had again been raped, this time in Prince George's County, he advised them to report to the authorities of that county, and then paid no further attention to the matter (R. 199-200, 296).

The Montgomery County police and prosecutor made no investigation of the character, background or record of Joyce Roberts (R. 198, 200, 203, 206, 253-55). As a

result, neither the State's Attorney por Lieutenant Whalen knew the following things which Sergeant Wheeler knew but did not communicate to the Montgomery County authorities: '(1) that Joyce had related to Wheeler a fantastic history of sexual promiscuity, (2) that she had initiated the second rape accusation, (3) that the accusation was palpably false, and (4) that she had been hospitalized in a psychiatric ward.

Prior to and during the trial, the defense knew nothing about the incidents which we have described. All that petitioners' assigned attorney knew about Joyce Roberts was what petitioners had told him about their encounter with her. (R. 211-13, 215.) He attempted to obtain records of the Juvenile Courts of Montgomery and Prince George's Counties concerning Joyce, but was not permitted to see them (R. 212, 295). He and the lawyer assigned to defend Joseph Johnson visited Joyce's home in an attempt to see her, but they were denied access to her by her mother. The mother also refused to discuss the case with them, saying that she was acting on instructions from Lieutenant Whalen. (R. 210-11.) 5

The Court of Appeals held, however, that because of petitioners' account to their attorney, "the defense must have known of the prosecutrix' general reputation for unchastity and that she was a sexually promiscuous girl" (R. 306).

The Court of Appeals held (R. 304) that "the prosecution should disclose to the defense such information as it

Moreover, Joyce was undoubtedly not at home. Unbeknownst to defense counsel (R. 212), the State's Attorney and Whalen, desiring to have Joyce "in protective custody," arranged to have the Juvenile Court for Monigomery County commit her to a State School for Girls on September 5, 1961 (R. 195-96, 204-06, 249-51, 275-77). This was done even though Joyce was a resident of Prince George's County (R. 206). On April 30, 1962, the Juvenile Court of Montgomery County marked its 116, "Closed - No longer [sic] residing within the jurisdiction of the Court" (R. 277).

has that may reasonably be considered admissible and useful to the detense in the sense that it is probably material and exculpatory, and where there is doubt as to what is admissible and useful for that purpose, the trial courtshould decide whether or not a duty to disclose exists." The court assumed that under this test the prosecution had a duty to disclose the information it had relating to Joyce Roberts' second rape accusation and attempted suicide. It held, however, that this undisclosed information was not sufficeently material and exculpatory so as to make the non-disclosure prejudicial and violative of due process (R. 304-08). Two judges of the en banc court dislented on the ground that the evidence admittedly withheld was important in itself to the defense and would also have been usable as a basis for further investigation (R. 309-15) The state of t

(b) Joyce Roberts' near probation status.

We have already reviewed the conflicting testimony at the criminal trial as to whether Joyce had told petitioners at the scene of the alleged rape that she was on probation, in trouble, couldn't afford to be caught, and if caught would have to charge that she was raped. Supra, pp. 5-6.

At the post-conviction hearing it was stipulated that at the time of the alleged rape, July 20, 1961, there was pending in the Juvenile Court for Prince George's County, Maryland, a petition alleging that Joyce was beyond parental control and a recommendation of the court's case worker that Joyce be put on probation (R. 174).

Joyce's friend Stephens testified at the hearing that on the Saturday before July 20, 1961, Joyce told him that "she did not want to go down into the Hyattsville, Maryland area because she was in fromble on her probation" (R. 159).

After petitioners were arrested, they told the Montgomery County police that Joyce had told them that she was on probation, and this allegation of theirs was seen in the police report by the State's Attorney for Montgomery County (R. 247, 249). Neither the State's Attorney nor the police made any effort to ascertain whether Joyce Roberts was on probation on July 20, 1961 (R. 200, 203, 249). Consequently, neither the State's Attorney nor the police of Montgomery County knew of Joyce's near-probation status (R. 206, 246).

Petitioners' assigned counsel knew about Joyce only what petitioners had told him of her statements at the scene of the alleged rape (R. 212). He tried to ascertain, prior to the criminal trial, whether there were Juvenile. Court proceedings against Joyce Roberts in Montgomery County and Prince George's County, but was refused access to the court records (R. 212, 295).

The Court of Appeals held (R. 308) that there was nothing in the record to show a withholding of evidence with respect to Joyce's near-probation status.

2. The Maryland rule on newly-discovered evidence.

On November 16, 1962, petitioners filed in the Circuit Court for Montgomery County a motion for a new trial based upon newly-discovered evidence. The motion was denied on November 20, 1962, on the ground that under Rules 567 and 759 of the Marfland Rules of Procedure (Appendix A, infra), promulgated by the Court of Appeals of Maryland, a motion for a new trial must be filed within three days after the verdict. The denial was affirmed on the same ground by the Court of Appeals on May 6, 1963. (R. 3, 281, 293, 295, 299.) Giles v. State, 231 Md. 387, 190 A.2d 627.

It is also Maryland law that newly discovered evidence does not furnish grounds for relief in post-conviction proceedings, including habeas corpus, coram nobis, and the statutory substitute for those writs. Daviels v. Warden, 221 Md. 634, 223 Md. 631, 161 A.2d 461; Diggs v. Warden, 221 Md. 634, 157 A.2d 453. Under Maryland law, therefore, prior to a

recent modification made too late to benefit petitioners, there was no avenue for obtaining relief from a conviction on the basis of evidence discovered more than three days after verdict.

Petitioners assembled documented evidence, discovered more than three days after their conviction, which was highly probative of their innocence (R. 8-27). Under Maryland law, described above, this evidence was, of course, not admissible at the post-conviction proceeding (see, e.g., R. 192-96), except insofar as it related to the suppression claim.

The newly-discovered evidence included evidence of the following:

- (1) The matters mentioned in our preceding discussion of the suppression claims. These include Joyce Roberts' attempted suicide; her second, unfounded rape accusation; the sexual promiscuity and perversion related by her to Wheeler; and Stephens' testimony that on the Saturday before her alleged rape by petitioners she had told him things very similar to those she allegedly told petitioners—that she was on probation and had had sexual relations the previous weekend with sixteen boys.
- (2) Joyce Roberts manifested an insouciant attitude toward the alleged rape. A day or two after the episode, she told a man friend that the Negroes who had allegedly

On July 12, 1965, effective September 1, 1965, the Maryland Court of Appeals amended Maryland Rule 764 (Md. Ann. Code (1967), vol. 9B, Cum. Supp. 1965), so as to authorize trial courts to entertain new trial motions on the ground of newly-discovered evidence if the motions are filed within ninety days after sentence or within ninety days after receipt of a mandate of the Court of Appeals affirming the conviction or dismissing the appeal therefrom.

Our description includes material from the following sources: affidivite appended to the post-conviction petition, offers of proof at the post-conviction bearing, some testimony which entered the record of that hearing.

raped her were bigger and better than white boys" (R. 178, 16). Within a week after, she flippahtly told a restaurant owner who asked her what had happened that "one or two more did not make that much difference to her" (R. 13-14).

- (3) Joyce manifested promiscuous and depraved sexual behavior on numerous occasions (R. 8-10, 15-19.)
- (4) Stewart Foster, who, according to petitioners' testimony had provoked the altercation at the car by calling petitioners' obscene, racist names, was an habitual brawler and frequently employed the peculiar epithet ascribed to him by petitioners (R. 12-13, 15, 18, 20, 194-95).
- (5) In conversations with friends after the alleged rape, Foster gave accounts of the altercation at the car which closely corresponded to petitioners' version of how the altercation came about (R. 10, 11-12, 194).

The Court of Appeals held that petitioners were not denied due process of law by the application of the Maryland law precluding judicial consideration of evidence discovered more than three days after verdict (R. 299).

SUMMARY OF ARGUMENT

I.

The Court has held that suppression by the prosecution of material evidence favorable to an accused upon request violates due process. When such suppression existed, a conviction is vulnerable to collateral attack by habeas corpus or its statutory equivalent.

A defense request for production of the evidence is not a prerequisite. The lower courts have so held, and the rationale of the suppression doctrine applies regardless of a request. A request requirement would stuitify the suppression rule since the need for disclosure is greatest when the defense is least able to know what, or whether, to demand. Dispensing with a request requirement does not increase the burden of the State, which is already under a duty to disclose exculpatory evidence.

The elements of the suppression rule are, therefore, materiality of the undisclosed information; actual or constructive knowledge of the prosecution; absence of actual or constructive knowledge of the defense.

By analogy to cases in which the constitutional vice is the admission of evidence, the test of materiality in a suppression case is whether the undisclosed evidence, if revealed, might have affected the outcome of the trial.

The court below inverted the correct test, applying a principle that suppressed evidence is immaterial if it might not have affected the result.

The evidence of the prosecutrix' near-probation status was material because it would have corroborated petitioners' version of the episode and supplied a motive for a false accusation against them. Non-disclosure of this evidence enabled the prosecution to convey a false impression by testimony elicited at the trial.

The evidence that the prosecutrix had made an unfounded accusation of rape against two other men a month after she had accused petitioners would have been admissible and would have dramatically supported the defense contention.

The evidence of the prosecutrix' second rape agrusation, her sexual promiscuity, her confinement in a psychiatric ward, and her attempted suicide, would have been admissible to impeach her credibility as indicative of mental illness. Her disclosures to Sergeant Wheeler of her promiscuity would also have corroborated petitioners testimony that at the scene of the alleged rape she told them that the had already had sexual intercourse with sinteen or seventeen other boys that week.

The information concerning the prosecutrix' promis-

cuity would also have supplied leads to evidence of her reputation for unchastity.

Finally, if the evidence had been disclosed, the defense could have applied for, and should have received, an order, for a pre-trial mental examination of the prosecutrix.

The court below found, and the evidence shows, that the Montgomery County State's Attorney and police knew that the prosecutrix had been involved in another rape accusation, shown by investigation to be groundless, that she had attempted suicide and been hospitalized, and that she had visited a psychiatrist. This information was in and of itself material. In addition, had it been disclosed a diligent defense would have discovered the further material information in the possession of the Prince George's County police and the hospital.

The prosecution should be charged with constructive knowledge of the evidence claimed to be suppressed of which the Montgomery County authorities did not have actual knowledge. This is because the failure to acquire such knowledge was the result of their determined avoidance of, exposure to information favorable to the accused, in violation of their duty to conduct criminal investigations impartially and with rudimentary diligence. The State should also be charged with the negligent failure of Sergeant Wheeler to convey his information to the Montgomery County authorities after he learned of the prosecution pending in that county.

The defense did not know of any of the evidence claimed to have been suppressed. The court below charged the defense with constructive knowledge of some of the undisclosed information, but the attributed knowledge is not coextensive with the suppressed evidence. Moreover, defense counsel could not validly be charged with constructive knowledge, because his failure to obtain the information was not caused by lack of diligence. And accused persons cannot be held responsible for a failure

of even non-diligent counsel to obtain exculpatory information in the hands of the State.

The evidence acknowledged below to have been suppressed would have been admissible, but the Court of Appeals held that its exculpatory value was insufficient to require a new trial. In view of Maryland's unique pro-- vision that the jury is the judge of the law, this substituted in an erratically selected class of cases court determination for jury determination of the exculpatory value of admissible evidence. Hence the decision below violates the equal protection clause.

Maryland law afforded no opportunity for petitioners to obtain judicial consideration of the massive, afterdiscovered evidence of their innocence. Due process requires that a denial of access to the judicial forum not. be arbitrary or irrational, and that a state provide to condemned persons a reasonable opportunity to demonstrate their innocence by newly-discovered evidence. The Maryland rules offend a "fundamental" principle of justice, shock the conscience, and discriminate against impover-Lahod defendants

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Petitiopers were convicted in violation of the one process clause by reason of the State's suppression of material exculpatory evidence.

A. The suppression doctrine is available to petitioners and does not require a request for production.

The Court held in Brady v. Maryland, 373 U.S. 83, 87:

"We now hold that the suppression by the prosecution of evidence favorable to in accused upon request violates due process where the evidence is material either to guilt or to punishment, firespective of the good faith or bad faith of the prosecution."

Because this rule announces a constitutional defect, it is clear that it is available to an accused not only on direct review of a conviction, but also, as here, in a collateral attack by habeas corpus or its statutory equivalent. Brady itself involved a proceeding under the Maryland Post Conviction Procedure Act, and the suppression decisions on which Brady relied were all babeas corpus cases. Moreover, the Maryland Court of Appeals held in this case that suppression of material exculpatory evidence "is ground for relief under the P. C. P. A." (R. 301).

In Brady the defense had requested production of the evidence withheld by the prosecution, a fact which accounts for the "upon request" qualification of the passage quoted above. We believe, however, that a defense request for disclosure is not a prerequisite to application of the sup-

See Brady at 88, citing United States ex rel. Abmetic v. Baldi. 195 F.2d 815 (Sd Cir.). United States ex rel. Thompson v. Dyc. 221 F.2d 763 (3d Cir.); Mooney v. Holohan, 294 U.S. 103; Pyle v. Kansas, 317 U.S. 213.

pression doctrine. This appears, first of all, from the authorities. The court below in this case, as well as all other courts which have applied the suppression doctrine,10 considered that a disclosure request is not an essential element. Secondly, the rationale of the suppression doctrine, the "avoidance of an unfair trial to the accused" (Brady, at 87), applies whenever the prosecution withholds exonerating evidence, whether or not disclosure was requested. Thirdly, a request requirement would stultify the suppression rule, since the need for disclosure is greatest precisely when the defense is so unaware of the exculpatory evidence as not to know what, or even whether, to demand. Fourthly, dispensing with a request requirement does not increase the burden of the State. Even absent a request, a prosecutor has a moral and proiessional duty to disclose exculpatory evidence, 11 and a significant breach of this duty requires that a new trial

Kidshar, 317-U.K. 314

The court below stated the rule as follows (R. 301): "It is clear that the suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process and is ground for relief under the P.C.P.A. Brady v. State, 226 Md. 422, 174 A.2d 187 (1961), aff d. 373 U.S. 85 (1963); Strosnider v. Warden, 228 Md. 663, 180 A.2d 854 (1962)."

¹⁰ See cases cited sapra, footnote 8, p. 19, and Barbes v. Warden, 331 F.2d 842, 845 (4th Cir.); United States ex rel. Meers v. Wilhins, 326 F.2d 135, 137 (2d Cir.); Askley v. Texas, 319 F.2d 80 (5th Cir.); United States ex rel. Montgomery v. Ragen, 80 F. Supp. 382 (N.D. III.); Smallwood v. Warden, 205 F. Supp. 325 (D. Md.); Application of Kapatos, 208 F. Supp. 883 (S.D. N.Y.); People v. Riley, 191 Misc. 888, 83 N.Y.S.2d 281 (Kings Cty. Ct.).

Cenou 6, Canous of Professional Ethics (American Bar Association), provides: "The primary duty of a invert engaged in public from cutton is not to convict, but to see that justice is done." See Barger v. United States, 295 U.S. 78, 85. The duty of the prosession to safeguard a fair trial requires him "to see to it that full disclosure is made at trial of whatever may be in his possession which bears in any insterial degree on the charge for which a leafandant to tried." United States v. Zborowski, 271 F.2d 661, 668 (Ed.Cir.). The duty is magnified in the case of impoverished infeadant. Bills v. United States, 245 F.2d 961, 863 (D.C. Cir.).

be granted on a direct appeal without regard to constitutional compulsion. 12

We shall proceed, therefore, on the assumption that prosecution suppression of material exculpatory evidence vitiates a conviction without a defense request for disclosure. It is evident that a non-disclosure meets this formulation if three conditions are met: (1) the undisclosed exculpatory information¹³ is material; (2) the prosecution has, or is by law chargeable with, knowledge of the undisclosed information; (3) the defense does not have, and is not chargeable with, such knowledge. In what follows we will deal with these topics in turn. There is no disagreement that the information claimed to be suppressed was not disclosed by the prosecution at or prior to petitioners criminal trial.

B. The information claimed to be suppressed was material to the issue of guilt or imocence.

1. The standard of materiality.

The suppression doctrine originated in decisions declaring convictions unconstitutional if the State had used at the trial material testimony known to it to be false. If In such a situation, the test of materiality is whether the false testimony "may have had an effect on the outcome of the trial." Napue v. Illinois, 360 U.S. 264, 272. As

¹² United States v. Consolidated Laundries Corp., 291 F.2d 563, 571 (2d Cir.); Griffin v. United States, 183 F.2d 990 (D.C. Cir.); Ellis v. United States, supra; Commonwealth v. Miller, 203 Pa. Super. 511, 201 A.2d 258.

¹⁸ It is obvious that the "suppression of evidence" doctrine is more correctly described as a "suppression of information" doctrine.

¹⁴ Pyle v. Kansas, 317 U.S. 213, 216; Mooney v. Holohan, 294 U.S. 103. See also Hysler v. Florida, 315 U.S. 411, 413; White v. Ragen, 324 U.S. 760; Alcoria v. Texas, 355 U.S. 28; Napue v. Illinois, 360 U.S. 264.

Napue holds, this test may be satisfied by evidence which is relevant only to the credibility of a witness. Similarly, where unconstitutionally obtained evidence has been admitted. The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction. Faby v. Connecticut, 375 U.S. 85, 66-87.

In Napue and Faky the constitutional vice was the admission of evidence. In all reason, a similar standard must apply is the cognate situation where the vice is the non-disclosure of evidence. Hence the test of materiality in a suppression case is whether the undisclosed evidence, if revealed, might have affected the outcome of the trial. This standard has in fact been previously employed by the Maryland Coart of Appeals, 15 as well as by other courts. 16

A standard less favorable to the accused is particularly inappropriate ima case like this one, involving a capital offense, indigent defendants, and a Maryland rule which, by precluding new trials on the basis of after-discovered evidence, gave extraordinary finality to the criminal trial and thereby a maximum effect to the suppression of exculpatory evidence.

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Bredy v. State, 226 Md. 422, 174 A.2d 167, aff'd sub nom, Brady v. Maryland, supra. The conirt in Brady expressed "considerable doubt as to how much good" the undisclosed evidence would have done the accused. 226 Md. at 429, 174 A.2d 171. It then held that "It would be 'too dogmatic' for us to say that the jury would not' have attached any significance to this evidence..." 226 Md. at 430, 174 A.2d at 171.

Borbee to Warsley, 331 F.3d 842, 847 (4th Cir.) ("One cannot possibly say with confidence that such a defect in trial was harm-less."); Smallstoot v. Wester, 205 F. Supp. 325, 338 (D. Md.) (the withhold swidence "might well have affected the result of the trial."); People v. Miley, 19t Misc. 898, 38 N.T.S.3d 981, 284 (Maga Civ. Ci.) the withhold swidence "could have been helpful to the defendant."); Delical States or rel. Therefore v. Doc. 221 F.2d 703 (dd Cir.) (the withhold evidence was cumulative).

Even if the court below had purported to apply the correct standard of materiality, its determination of that issue would not be binding, and this Court would still make its independent evaluation of the record. Napus v. Illihois, supra, at 271-72. Nevertheless, it is significant that the court below plainly inverted the correct standard. The court applied not the principle that suppressed evidence is material if it might have affected the result, but rather a contrary principle that the evidence is immaterial if it might not have affected the result.

The court stated its theory as follows (R. 302):

"We think that in order for the nondisclosure of evidence to amount to a denial of due process it must be such as is material and capable of clearing or tending to clear the accused of guilt or of substantially affecting the punishment to be imposed in addition to being such as could reasonably be considered admissible and useful to the defense."

This passage treats as distinguishable three concepts "material," "tending to clear the accused," and "use ful to the defense" - which by normal usage mean the same thing. The explanation is that the court gave a unique meaning to "tending to clear the accused" - that evidence has such a tendency only if it is foolproof. This appears from the reasons which the court gave for holding that certain of the withheld evidence failed the test of materiality. Thus the court ruled that evidence that the prosecutrix was suffering from nymphomania would contribute "nothing to show ... that she had consented" to having sexual intercourse with petitioners (R. 307-08). Only slightly less extreme were these other speculations of the court:

(1) Mental illness of the prosecutrix on August 26, 1961, the date of the attempted suicide, would not be material for impeaching her credibility because her testimony entre la company de la company

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was given some three months later, on December 4, 1961 (R. 304-05). 17

- (2) The attempted suicide was not material because the jury might have concluded (incorrectly) that it was indicative of emotional disturbance caused by the prosecutrix' alleged rape by petitioners and Johnson (R. 305).
- (3) In unwitting contradiction of (2), the attempted suicide was not material because it "was an outgrowth of an incident totally unrelated" to the alleged rape by petitioners (R. 305).
- (4) The prosecutrix' second rape accusation was not material because it was made to her boy friend and not to the police (R. 307, 296). 18

The court overstated the evidence in laying (R. 307) that Joyce Roberts denied to Sergeant Wheeler that any rape had occurred, the first fold Wheeler that the two men at the Edmonston party "had had semal relations with her against her will" (R. 182) — clearly an accusation of rape made to a police officer. Then, under questioning by Wheeler, she divulged the facts which showed her accusation was unfounded, without ever acknowledging that she had not in fact been raped (R. 182-85, 25-27).

^{.17} The court justified this conclusion by asserting (R. 305) that the psychiatrist who testified in the post-conviction proceeding stated that the attempted suicide on August 26 would not permit an opinion as to the prosecutrix' mental condition at the date of trial. The assertion represents a misreading of the testimony. The psychiatrist first did express an opinion on the subject, saying that "there is a substantial risk that she would still be mentally ill three-and-a-half months later!" (R. 241). Then occurred s confusing exchange with the trial judge, in which the witness' response could be interpreted to mean that he could not give such an opinion (R. 242). But the witness then contradicted the possible contradiction by testifying that he did have an opinion about how the mental illness would affect the person's credibility as a witness (R. 243). The trial court inexplicably sustained objections to the efforts of petitioners' counsel to clarify the testimony (R. 243-44). In any event, it takes no psychiatrist to appreciate that even if the prosecutrix had recovered from mental illness during the three-month interval, the existence of such illness at the time of the episode or between the episode and the trial could well have affected her ability to recall the episode accurately even if it did not affect her veracity at the trial.

(5) Evidence indicative of mental illness was not material to impeach the prosecutrix' credibility, because it did not establish mental incompetence as a witness or contradict her trial testimony (R. 305-06).

These infelicities show not only that the court applied an erroneous standard of materiality, but that it utterly failed to appreciate the realities of the situation. At the criminal trial, the case came down to an issue of credibility between the prosecutrix and the accused. See supra, pp. 3-6; Giles v. State, 229 Md. 370, 381, 183 A.2d 359, 364; Johnson v. State, 232 Md. 199, 205, 199 A.2d 506, 509. Petitioners introduced nothing to impeach the credibility of Joyce Roberts or to corroborate their version of the events. An all-white jury had to decide between believing the unimpeached testimony of a young white girl and the unsupported testimony of petitioners that she had solicited sexual intercourse with three Negro strangers. The result was a foregone conclusion. The matter would have been otherwise, however, had the defense been in possession of the information which we claim was suppressed. For this information, as we shall show, would have corroborated petitioners' version, would have impeached the credibility of the prosecutrix, and would have made believable the otherwise implausible defense of consent. On any rational basis, therefore, the information was material.

2. The materiality of the prosecutrix' nearprobation status.

As already related, petitioners testified at their criminal trief, and Joyce Roberts denied, that while they were in the woods and prior to any sexual intercourse, Joyce told them that she was on probation, that she was in trouble, that she could not afford to be caught with them, and that if caught she would have to claim that she was raped. After their arrest, petitioners told the police that Joyce had said she was on probation (R. 249). Joyce testified

under redirect examination by the State, that she had not been on probation, and on cross-examination the prosecution ridiculed John Giles' testimony that she had said she was on probation. Supra; pp. 5-6.

It was stipulated at the post-conviction hearing that at the time of the alleged rape, July 20, 1961, there was pending in the Juvenile Court for Prince George's County, Maryland, a petition alleging that Joyce was beyond parental control and a recommendation of the court's case worker that Joyce be put on probation. There was also introduced at the post-conviction hearing uncontradicted evidence that Joyce knew of her near-probation status on July 20, 1961, regarded it as actual probation, and was worried about getting into more trouble. This evidence consisted of testimony of one of Joyce's boy friends, John Patrick Stephens, that on the Saturday before July 20, 1961 (a Thursday); Joyce told him that "she did not want to go down into the Hyattsville, Maryland area because she was in trouble on her probation." Supra, p. 12.

The materiality of Joyce's near-probation status cannot be gainsaid. Petitioners had no way of knowing, unless Joyce had told them, that she was "in trouble" and in a status which she reasonably could (and did) call "probation," And her telling them such a thing manifestly negatived rape, corroborated their version of the episode, and supplied a motive for her falsely to accuse them of rape.

Moreover, if the prosecution was chargeable with knowledge of the status, it did more than passively sup-

¹⁹ The court below did not pass on the materiality of this evidence but held, without explanation, that the record did not show "a with-holding of evidence" of the near-probation status (R? 308). Since it is unquestimable that the status was not divulged to the defense (near lafter, p. 29), the court's holding must be based on the fact that the Status Attorney and Lieutenant Whalen did not know of the status. For the remains why the prosecution should be charged with such knowledge, see fagra; pp. 34-38.

press evidence. Its ridiculing of John Giles' testimony on cross-examination and its eliciting of testimony from Joyce that she had not been "on probation" conveyed to the jury that petitioners' testimony was an inept-invention made out of whole cloth. 20 In this respect, therefore, the case is like Alcorta v. Texas, 355 U.S. 28, which granted habeas corpus relief because the State had elicited testimony which, though literally true, gave the jury a false impression by omitting relevant facts known to the prosecution.

3. The materiality of the incidents following the alleged rape.

Petitioners encountered Joyce Roberts on the night of July 20, 1961. Their criminal trial began on December 4, 1961.

On August 27, 1961, Joyce attempted suicide, following which she was confined in a hospital psychiatric ward for ten days. While in the hospital she told Bostic that she had been raped by two men at a party on the night of August 26, 1961. When interviewed in the hospital by Detective Sergeant Wheeler, she disclosed to him the falsity of this accusation and her history of sexual wantonness. Supra, pp. 8-9.

Evidence of the above events was material in several respects.

(a) The evidence that Joyce Roberts had made an unfounded accusation of rape against two other men a month after she had accused petitioners would have dramatically supported the defense theory that her charge

The seal with which the State sought to exploit the testimony on probation also appears in the cross-examination of James Giles. He testified on direct that Joyce had told him that she was "in trouble" and "south" t afford to be caught" (R. 127). But on cross, the prosecutor repeatedly represented that he had testified that Joyce had said she was on probation (R. 140).

against petitioners was likewise false. This evidence could have been fortified, if that were thought necessary, by a wealth of proof that modern medical science has established the existence among some young girls and women of a psychic compulsion of contriving offenses by men. See materials collected in 3 Wigmore, Evidence (3d.ed. 1940) § 942a, and more recent authorities cited in Ballard v. Superior Court, 49 Cal. Reptr. 302, 410 P.2d 838, 846.

In sex cases, a prosecutrix' prior accusations of sexual molestation are admissible in evidence. In Smallwood v. Warden, 205 F. Supp. 325 (D. Md.), suppression of a prior rape accusation was one of the grounds for granting habeas corpus relief.

(b) The evidence of Joyce's second rape accusation, her sexual promiscuity, her confinement in a hospital psychiatric ward, and her attempted suicide, would have been admissible to impeach her credibility as indicative of mental illness or emotional disturbance. This evidence could also have been fortified by psychiatric opinion testimony, based upon the evidence of her behavior, impeaching her testimonial reliability. 22 As the expert testimony

²¹ Rice v. State, 195 Wis. 181, 217 N.W.2d 697; State v. Wesler, 137 N.J.L. 311, 59 A.2d 834, aff'd, 1 N.J. 58, 61 A.2d 746; People v. Huriburt, 166 Cal. App. 2d 334, 333 P.2d 82, 86; People v. Evans, 72 Mich, 367, 40 N.W. 473; People v. Wilson, 170 Mich, 669, 137 N.W. 92; State v. Poston, 199 Iowa 1073, 203 N.W. 257.

Among the types of evidence admissible to impeach a witness' bredibility on grounds of mental disturbance are the following. Conduct indicative of nymphomania: People v. Cowles, 246 Mich. 429, 224 N.W. 387; Miller v. State, 49 Okla. Cr. 133, 295 Pac. 403; People v. Bastian, 330 Mich. 457, 47 N.W. 2d 692. Attempted suicide: State v. Poolos, 241 N.C. 362; 85 S.E. 2d 342; see United States v. Soblem, 391 F.2d 236, 242 (2d Cir.). Past confinement in mental institution: Powell v. Wimms, 287 F.2d 275 (5th Cir.); United States v. Pagliese, 163 F.2d 497, 499 (2d Cir.); People c. Kirkes, 245 P.3d 816, 832 (Dist. Ct. App.), aff'd, 59 Cal. 2d 719, 249 P.2d 11 Walley s. State, 249 Miss. 136, 126 80.2d 543. Psychiatric opin-

at the post-conviction hearing showed, the attempted suicide by this sixteen-year-old girl in itself established a likelihood of serious mental disorder (R. 240-41).

Evidence of a witness' mental illness goes not to character, but to the capacity and ability of the witness to perceive and describe accurately his or her experiences and, in sex cases, to the witness' bias against a class (men) to which the accused belong. 3 Wigmore, op. cit. \$5 931, 963; McCormick, Evidence (1954) 99. Under the cases, the suppression of evidence indicating possible mental illness of a State's witness requires habeas corpus relief.²³

(c) At the criminal trial petitioners festified that prior to any acts of intercourse Joyce had told them that she had already had sexual intercourse with sixteen or seventeen other boys that week and two or three more wouldn't make any difference (supra, p. 5). This jestimony, if believed, obviously would have been powerful evidence of consent.

Wheeler of her extraordinary promiscuity would have componented petitioners' testimony by establishing the definite possibilities that (1) she had had intercourse with sixteen or seventeen other men that week and (2) she would have recounted such an experience, whether real or fictitious. Furthermore, an alerted defense might have

ion testimony, whether based on observation of the witness or on instances of aberrant behavior: Powell v. Wiman, 293 F.2d 605 (5th Cir.); Ashley v. Texas, 319 F.2d 80 (5th Cir.); Coffid v. Reichard, 148 F.2d 278, 280 (6th Cir.); United States v. Hiss, 88 F. Supp. 559 (8.D. N.Y.); Taborsky v. State, 142 Conn. 619, 629—30, 116 A.2d 433, 437-38; People v. Cowles, supra; State v. Butler, 27 N.J. 560, 143 A.2d 530, 552; Rice v. State, supra; Bouldin v. State, 87 Tex. Cr. R. 419, 222 S.W. 555; State v. Wesler, supra. In sex cases, prior accusations of sexual molestation: cases cited supra, p. 28, footnote 21.

²³ Powell v. Wiman, 287 F.2d 275 (5th Cir.); Powell v. Wiman, 293 F.2d 605 (5th Cir.); Smallwood v. Warden, supra; United Stater ex rel. Monigomery v. Ragen, 86 F. Supp. 382 (N.D. III.).

discovered in time for the trial other evidence along the same line, such as testimony of Joyce's friend, Stephens, which was introduced at the post-conviction hearing but then stricken. Stephens testified that on the Saturday night before Joyce's alleged rape by petitioners she told him that on the preceding weekend she had had sexual relations with sixteen boys at a party in Baltimore (R. 160-61).

It is of no consequence that the Maryland court has excluded evidence of prior unchaste acts when offered in a rape case as evidence of consent of the prosecutrix. 24 The evidence here would be offered not as proof of propensity, but to corroborate petitioners' testimony of what Joyce had told them at the scene of the alleged rape. It is a commonplace that evidence inadmissible for one purpose may be admissible for another. Nor can it be assumed that the Maryland courts would extend their rule beyond all semblance of rationality to cases involving evidence of nymphomania rather than sporadic instances of unchastity.

The court below virtually conceded that the evidence of the attempted suicide and second rape accusation could "reasonably be considered admissible and useful to the defense" (R. 304). Such a showing of potential value should be enough to satisfy the suppression rule. To demand more would require impractical and abstract speculation about the ways in which evidentiary questions might arise and the solutions which an ingenious defense might find.

(d) As the court below recognized (R. 306), Maryland law permits the admission in a rape prosecution of evidence of the prosecutrix' general reputation for unchastity. If the defense had had the information possessed by Sergeant Wheeler, it would have had ample leads to the obtaining of such evidence. For Joyce's second rape

²⁴ Shortser v. State, 63 Md. 149. Other jurisdictions are sharply divided. See cases collected in 140 A.L.R. 382-90.

accusation located the house where the party of August 26, 1961, had been held and the names of the two men with whom she had had intercourse that night (R. 24).

(e) Finally, had the defense known of Joyce's second rape accusation, her attempted suicide, her hospitalization as a mental patient, and her bizarre sexual history, it could have applied for and should have received, an order that she receive appre-trial mental examination. Trial courts have discretionary authority, stemming from their inherent power over witnesses and the admission of evidence, to order such examinations, and should do so on. a proper showing. State v. Butler, 27 N.J. 560, 143 A.2d 530, 552-56; Ballard v. Superior Court, 49 Cal. Rept. 302, 410 P.2d 838, 849; State v. Klueber, 132 N.W.2d 847, 850 (S. Dak.). Wigmore admonishes, op. cit. \$ 924a, "Nojudge should ever let a sex-offense charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician." This view has the strong support of expert commentators. 25 Indeed, had the Montgomery County police and prosecutor been more conscious of their responsibilities, they would, under the circumstances of this case, have taken the initiative to obtain a psychiatric examination before instituting prosecution.

If a mental examination of the prosecutrix had been ordered, it is possible that she would have agreed to the examination. Considering what is now known of her history and of her attitude soon after the alleged rape (see supra, pp. 8-9, 14-15), the results of such an examination would probably have been destructive of her credibility.

If the prosecutrix refused to be examined, the court could exclude her testimony or permit the defense to comment on her refusal. Ballard v. Superior Ct., supra.

²⁵ See texts cited in Ballard v. Superior Court, supra, 410 P.3d at 846; Wigmore, loc. cit.

C. The prosecution knew, or is chargeable with knowledge of, the evidence claimed to be suppressed.

1. The prosecution's actual knowledge.

The Maryland Court of Appeals held (R. 303) that for the purposes of the suppression doctrine the prosecution was charged with the knowledge of the prosecutors themselves (the State's Attorney and his assistants) and of the police of Montgomery County, "the local subdivision that has jurisdiction to try the case." To attribute to "the prosecution" knowledge of the investigating police is plainly reasonable and is in accord with the other decisions on the subject. 26

Applying this principle, the Court of Appeals charged the prosecution with knowledge of the following: "that Joyce Roberts had probably been involved in some sexual activities with boys on the evening of August 26th under circumstances not amounting to criminal rape, on which her father preferred rape charges, but which investigation showed were groundless; that on the same evening she had intentionally taken an overdose of sleeping pills in an attempt to commit suicide and as a result had been admitted to a hospital; and that for reasons known only to her mother, the mother had taken her daughter to a psychiatrist" (R. 304). This holding is plainly impelled by the testimony of the State's Attorney for Montgomery County and Detective Lieutenant Whalen, who was in charge of the County's police investigation. See supra, pp. 10-11.

The information found by the Court of Appeals to be

Barbes v. Warden, 331 F.2d 842, 846 (4th Cir.); Hall v. Warden, 222 Md. 590, 158 A.2d 316. The prosecution is also responsible for false testimony by a policeman. Strosnider v. Warden, 228 Md. 663, 180 A.2d 854; Curran v. Delaware, 259 F.2d 707 (3d Cir.).

known to the prosecution — involvement in a second, false rape accusation, attempted suicide, and visiting a psychiatrist — was, for reasons already canvassed, in and of itself material. Assuming absence of defense knowledge, the non-disclosure of this information was therefore an unconstitutional suppression without more.

But there is an additional reason why the concededly known information was material. Had it been disclosed, a diligent defense would have discovered even more material information. The State's Attorney for Montgomery County knew, as he testified at the post-conviction hearing (R. 252-53), that the second rape accusation had been investigated in Prince George's County. Had he disclosed his knowledge, the defense would have been led to the police department of that county and thereby to the information obtained and reported by Detective Sergeant Wheeler of the Prince George's Police Department. This information showed that the second rape accusation had originated with Joyce Roberts' tale to Bostic, that the accusation was indubitably false, and that Joyce had and admitted to a fantastic history of sexual promiscuity and perversion. Disclosure of the prosecution's knowledge of Joyce's stricide attempt and hospitalization would have led the defense to the Prince George's County General Hospital, and thereby to a record of an admitting diagnosis of psychopathic personality (R. 279) and to the fact that she had been placed in the psychiatric ward.

In determining the materiality of suppressed information, it is reasonable to consider not only the information which was actually known to the prosecution, but also the further information which investigation would have discovered had the prosecution fulfilled its duty of disclosure. And this is particularly true if, as was the case here (see sifra, pp. 34-38), the only reason why the prosecution's knowledge was limited was its culpable failure to investigate the matters which came to its attention. As the dissenting opinion below stated (R. 315), "The State cannot claim the withheld information was amusable by

the defense because the prosecution chose to know no more."

2. The presecution's constructive knowledge.

Kardy, the State's Attorney for Montgomery County, and Lieutenant Whalen dented knowledge of Joyce Roberts' mear-probation status, nor does the record reveal that they knew of her sexual promiscuity. They knew that there had been a second rape accusation, but not that it was a false charge originated by Joyce. They knew that Joyce had attempted suicide and had been hospitalized, but not that she had been placed in the psychiatric ward. Supra, p. 10.

The matters not known by the Montgomery County authorities were known by other State officials — the near-probation status by the Juvenile Court authorities in Prince George's County and everything else by the police department of Prince George's County, particularly Sergeant Wheeler.

The court below refused to charge the prosecution with the knowledge possessed by the Prince George's' County officials on the ground that to do so "would impose a practically impossible and unworkable burden on local authorities" (R. 303).

In our view, the court failed to analyze the problem correctly. The constitutional issue was whether the State, not just "local authorities," was at fault in failing to provide a fair trial for petitioners by reason of the non-disclosure of exculpatory evidence. If an obligation of disclosure exists at all, clearly the State is responsible for the fault of the local prosecutor and local investigating.

Put, as we have already noted, the defense would have discovered the matters not known by Kardy and Whalen, with the exception of the near-probation status, had they disclosed what they did know.

police. On the other hand, it cannot realistically be said that the State is at fault whenever, and simply because, some other State official has the undisclosed information in his possession. For the latter official may not be at fault in failing to disclose it. Yet if the circumstances are such that he, acting as an agent of the State, is at fault, then so is the State, his principal.

In the present case, the non-disclosure of the information not known to Kardy and Whalen was caused by a double fault. The Montgomery County prosecutor and police, and therefore the State, were at fault because, as we later develop, their failure to acquire the information was caused by a gross breach of their duty, owed to both the public and those accused to conduct criminal investigations impartially and with rudimentary diligence. Adherence to such a duty would have required no greater burden of them than was already demanded by the proper execution of their official responsibilities. On this ground, the "prosecution" was chargeable with constructive knowledge of Joyce's near-probation status and of the information in the possession of the police of Prince George's County.

The State was also at fault because Sergeant Wheeler, of the Prince George's County police, failed to communicate his sensational information to the Montgomery County authorities after he learned of the case pending against petitioners (supra, p. 9). For surely it is an elementary, routine and non-onerous duty of the police of one county to communicate to the police of a sister. county information relevant to a prosecution which they know is underway in the latter jurisdiction. Indeed, it is inconceivable that Sergeant Wheeler would not have notified the Montgomery County police had he acquired information which favored the prosecution rather than the, defense. On this ground, the prosecutors were chargesble with constructive knowledge of the information in Sergeant Wheeler's possession because their failure to acquire such knowledge was due to Wheeler's fault (as well as to their own).

It seems beyond question that the Montgomery County State's Attorney and police were grossly negligent and indifferent to their obligation to conduct an unbiased investigation, and that this negligence was the cause of their failure to learn of Joyce's near probation status and of the matters known to the Prince George's County police. The circumstances known to the Montgomery County authorities were such that any responsible police officer and prosecutor could not help but realize the need to investigate the character and background of the prosecutive and to seek facts to confirm the account of the accused.

From the outset, the police knew of the findings of the physician who examined Joyce and of the conflicting accounts of Joyce and petitioners.

The physician found evidence of sexual intercourse, but not of forcible penetration. Supra, p. 6.

By Joyce's own story (supra, pp. 4-5): She, a 16year-old girl, was alone in the woods, late at night, with a 21-year-old man. They had gone there with two other men. They were, she said, to be joined by two of her girl friends, but these never appeared. They were, she said, going swimming, but she had no bathing suit with her. When the altercation at the car started, she ran into the woods for only 30 feet. When John Giles joined her there she quietly conversed with him for about ten minutes. She was the first to introduce the subject of sex, offering him intercourse if he helped her get away. When James Giles and Johnson joined them the offered no resistance to intercourse. Fright might explain the lack of resistance or outcry, but not her failure to ask to be let alone. (Her conversation with John Giles proved that she had not been struck dumb.) She was not threatened or subjected to violence. She removed her own clothes.

Petitioners' account to the police claimed consent and, if true, indicated that Joyce was mentally disturbed and

sexually promiscuous. Petitioners also told the police that Joyce had said she was on probation. (Supra, p. 12) Lieutenant Whalen also knew that Joyce had been taken to a psychiatrist (supra, p. 10). The charge was of a capital offense, and the indigent accused had no investigative resources.

These facts demonstrated a crying need for inquiry into Joyce's record and character and for an attempt to verify the account of the accused by checking whether she was "on probation." Yet the State's Attorney and the police did not lift a finger in that direction. Supra, p. 10. They maintained their lethargy even after they had received the further startling news of the attempted suicide and the second rape accusation. They did so even though the specific important things to investigate were painfully obvious — the suicide attempt, the second rape accusation, and Joyce's Juvenile Court record — and though the information they neglected to procure was readily obtainable, being in the hands of the authorities of an adjacent county.

In short, the State's Attorney and the police did not merely overlook, they determinedly rejected exposure to, information favorable to the accused despite the suspicious circumstances surrounding the accusation. It is unbelievable that they would have shown the same apathy if the social and economic status of the protagonists had been reversed — if the accused had been white, middle-class youths and the complaining witness an impoverished Negro girl.

On principle and under the authorities, the prosecution should be charged with knowledge of information which it failed to obtain by reason of such culpable neglect.

Prosecution suppression of material evidence renders a conviction unconstitutional even though the State officials acted in good faith. Brady v. Maryland, 373 U.S. 83, 87. It follows that a negligent suppression of material evidence is unconstitutional.

Ordinarily, the negligence consists of a breach of duty to communicate evidence to the accused. But communication is not the only duty involved. Thus the State also has a duty to preserve exculpatory evidence, so that its negligent loss by the State renders a conviction unconstitutional. Kyle v. United States, 297 F.2d 507 (2d Cir.); United States v. Heath, 147 F. Supp. 877 (D. Hawaii); United States v. Consolidated Laundries Corp., 291 F.2d 563 (2d Cir.). Ct. United States v. Lonardo, 350 F.2d 523 (6th Cir.) (conviction reversed because of deliberate destruction of Jencks Act statements).

What is involved here is a cognate duty, that of the State to exercise rudimentary diligence to acquire, and certainly not to avoid, relevant evidence. The existence of such a duty has been recognized. In United States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (N.D. Ill.), habeas corpus relief was granted on the ground that "the prosecution either knew or should have known" of important exculpatory evidence and was "charged with the knowledge" (at 390). The court also stated (at 387) that a prosecutor "must not willingly ignore that which is in an accused's favor,"

Smith v. Commonwealth, 331 Mass. 585, 121 N.E.2d 707, holds that the prosecution has a duty to investigate an accused's reasonable claim of an alibi, even if the prosecutor in good faith believes that the defendant is guilty. People v. Fishgold, 71 N.Y. Supp. 2d 830 (Kings Cty. Ct.), recognizes the duty of the Stafe to investigate the credibility of its witnesses. See also in Re Imbler, 55 Cal. Rptr. 293, 300, 387 P.2d 6, 13, stating: "We have no doubt that negligence of representatives of the state in preparing and presenting a criminal prosecution could in some cases result in a denial of a fair trial."

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D. The defense did not know, and is not chargeable with knowledge of the withheld information.

There can, of course, be no unconstitutional suppression of information known to the defense in time for the trial.

It is unquestioned, and the record establishes without contradiction, that petitioners' assigned counsel had no knowledge of the information which we assert was unconstitutionally suppressed — Joyce Roberts' second rape accusation, her near-probation status, her attempted sucide, her confinement to a hospital psychiatric ward, and her revelations to Sergeant Wheeler of her sexual promiscuity and the falsity of her second rape accusation. As counsel testified, all he knew of Joyce's background was his clients' account to him of what she told them on the night of July 20, 1961. Counsel's attempt to get further information was frustrated by his inability to interview Joyce and to obtain Juvenile Court records. Supra, p. 13.

Nevertheless, the Court of Appeals held that "the defense must have known of the prosecutrix" general reputation for unchastity and that she was a sexually promiscuous girl." This holding was based on the fact that petitioners' account to their counsel raised "some question as to the character of the prosecutrix which properly could have been investigated." (R. 306.)

The court thus applied a double standard. It refused to charge the negligent prosecution with constructive knowledge. It charged the diligent defense counsel with constructive knowledge.

The holding is both irrelevant and wrong. It is irrelevant because the constructive knowledge attributed to the defense is not co-extensive with the evidence which was suppressed. Nor was any suspicion of Joyce's character, engendered by petitioners' account of her actions, a substitute for the factual information which the prosecution knew or should be charged with knowing.

The holding is wrong, not only because defense counsel was diligent, but also because accused persons cannot be held responsible for a failure of even non-diligent counsel to obtain exculpatory information in the hands of the State. Barbee v. Warden; 331 F.2d 842, 845 (4th Cir.); People v. Hoffner, 129 N.Y. Supp. 2d 833 (Queens Cty. Ct.). This is particularly true when counsel was appointed by reason of the indigency of the accused. It cannot be contended that the denial of a constitutional right to disclosure of exculpatory evidence possessed by the State is excused by the deprivation of the constitutional right to effective representation by counsel.

IL.

The decision of the Maryland Court of Appeals denied petitioners the equal protection of the laws.

The court below virtually conceded that the suppressed evidence of the attempted suicide and the second rape accusation "was reasonably admissible" (R. 304). For reasons already canvassed, the concession was obviously correct. The court held, nevertheless, that the prosecution's breach of its duty to disclose this evidence did not constitute a violation of due process because the evidence was not sufficiently exculpatory and its suppression was not prejudicial.

This decision denied petitioners the equal protection of the laws, in violation of the Fourteenth Amendment, in view of Maryland's unique provision that the jury is the judge of the law as well as the facts. Md. Constitution, Art. XV, \$ 5, infra. Appendix A. For by its holding the court substituted court determination for the right of jury determination in an erratically selected class of cases—those in which the prosecution has suppressed admissible evidence.

Brady v. Maryland, 373 U.S. 83, held that the Maryland

Court of Appeals had not violated equal protection by according no more than a new trial limited to the issue of punishment where the prosecution had suppressed evidence relevant only to punishment. The holding was based, however, on the fact that despite the Maryland provision on the authority of the jury, the Maryland courts had retained the power to determine the admissibility of evidence. Both the opinion of the Court and the disserting opinion of Justices Harlan and Black recognized that the equal protection clause would have been violated by the holding of the Court of Appeals if the suppressed evidence had been admissible on the issue of guilt as well as punishment. See Brady at 89, 92-93.

In the present case, the suppressed evidence of the suicide attempt and second rape accusation was admissible on the issue of guilt. As the dissenting opinion pointed out (R. 313), the judges in the majority, by holding that this concededly withheld evidence was insufficiently exculpatory, were "arguing the weight of the evidence and put themselves in the place of the triers of the facts." Hence Brady v. Maryland teaches that the Court of Appeals denied petitioners equal protection by substituting its appraisal of the exculpatory value of the suppressed evidence for the jury's.

Ш.

Petitioners were deprived of due process by being denied an opportunity to obtain a new trial on the basis of newly-discovered evidence.

Under Maryland law, as it existed before being modified too late to benefit petitioners, newly-discovered evidence, no matter how cogent, was not available as a ground for setting aside a conviction, with the academic exception of a new-trial motion filed within three days after verdict. As a result, petitioners, serving life sen-

tences after a commutation of death penalties, have been and are precluded from obtaining judicial consideration of the massive new evidence of their innocence ²⁸ which was not available at the trial and which neither they nor their appointed counsel could possibly have discovered before trial. Supra, pp. 13-15:

In our view, the due process clause requires a state to provide to condemned persons a reasonable opportunity to demonstrate their innocence on the basis of afterdiscovered evidence. In holding the contrary, the court below simply cited (R. 299) its prior decision, Brown v. State, 237 Md. 492, 498, 207 A.2d 103, which relied on the fact that the federal Constitution does not require a state to provide appellate review of criminal convictions. Griffin v. Illinois, 351 U.S. 12, 18. The analogy is unsound. Dispensing with appellate review represents nothing more than the concentration of the state's judicial power at a single level. But refusal to allow a remedy based on after-discovered evidence involves not a distribution of judicial power, but instead a denial of access to any judicial forum by one seeking redress. Such a denial is obviously subject to constitutional limitations, including a restriction that it not be arbitrary or irrational. Cf. Lane v. Brown, 372 U.S. 477; Boyd v. United States, 116 U.S. 616: Societe Internationale v. Rogers, 357 U.S. 197, 209-11. In the said of a section of a con-

It is only in primitive or despotic societies that infallibility is attributed to the tribunals of the sovereign. In more enlightened civilizations, it is recognized that miscarriages of justice can and do occur, and that provision must be accorded for their rectification.

At petitioners' clamency hearing there were presented letters to the Governor from five of the jurors in petitioners' criminal trial who had been the new evidence which had by their been assembled, stating that if they had known at the trial what they now knew, they would not have voted to convict. Kempton, Clemency in Aunapolis, New Republic, Oct. 26, 1963, pp. 6, 8.

What is the interest which justifies the State of Maryland in continuing the lifelong imprisonment of persons who, if given the opportunity, could demonstrate their innocence? There are, of course, valid reasons for protecting the finality of judgments. But it is shocking that the policy against punishing the innocent should be wholly sacrificed to the lesser policy favoring finality. Other jurisdictions have had no untoward results when they have accommodated the two policies by allowing a reasonable time for the production of newly-discovered evidence. Cf. Rule 33, Fed. Rules Cr. Proc., allowing two years after final judgment.

Maryland's archaic rules precluding judicial consideration of newly-discovered evidence contravene a deepgrained American tradition, evidenced in innumerable popular narratives, that victims of injustice can be freed when the evidence of their victimization is uncovered. Maryland's rules violate the expanding requirements of due process because they offend a "fundamental" principle of justice (Snyder v. Massachusetts, 291 U.S. 97, 105), are "repugnant to the conscience" (Palko v. Connecticut, 302 U.S. 319, 323), and contain a built-in "invidious discrimination" against defendants who are too poor to conduct extensive pre-trial investigations. Griffin v. Illinois, 351 U.S. 12. or an American

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Congress of the transfer of the state of the CONCLUSION

The judgment below should be reversed with the direction that petitioners be released from imprisonment unless afforded a new trial within a reasonable time.

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Attorneys for Petitioners

APPENDIX CONTRACTOR SERVICES AND AND ASSESSED ASSESSED.

STATUTES AND RULES INVOLVED

1. Md. Ann. Code (1957) Art. 27, § 461, provides:

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"§ 461: Rape generally.

Every person convicted of the crime of rape or as being accessory thereto before the fact shall, at the discretion of the court, suffer death, or be sentenced to confinement in the penitentiary for the period of his natural life, or undergo a confinement in the penitentiary for not less than eighteen months nor more than twenty-one year's; and penetration shall be evidence of rape, without proof of emission."

- 2. The Maryland Post Conviction Procedure Act, Md. Laws 1959, c. 429, provided in part as follows:
 - "§ 645A. Right of appeal of convicted persons.
- (a) Appeal in lieu of former remedies; when denied.—
 Any person convicted of a crime and incarcerated under sentence of death or imprisonment, ... who claims that the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of this State, or that the court ... was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy, may institute a proceeding

This provision was revised in respects not material hereto while this case was pending in the Maryland Court of Appeals. Md. Laws 1965, c. 442; Art. 27, \$ 645A, 1965 Cum. Supp. to Md. Ann. Code (1957).

under this subtitle to set aside or correct the sentence, provided the alleged error has not been previously and finally litigated or waived in the proceedings resulting in the conviction, or in any other proceeding that the petitioner has taken to secure relief from his conviction.

3. Maryland Rules of Procedure, vol. 9B, Md. Ann. Code (1957), prescribed by the Court of Appeals of Maryland, contains the following provisions, among others, under Subtitle BK, Post Conviction Procedure.

"Rule BK 40. How Commenced-Venue.

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A proceeding under the Uniform Post Conviction Procedure Act shall be commenced by the filing of a verified petition in a court having criminal jurisdiction in the county where the conviction took place."

"Rule BK 44. Hearing.

d. Boidence. balance to be for the total

The court may receive proof by affidavit or deposition and may also take oral testimony or other evidence, where justice so requires."

tanger of the court of the court.

"Rule BK 45. Order of Court.

a. Scope.

After the hearing the court shall make such order on the petition as justice may require. In the event the order shall be in favor of the petitioner, the court may also provide for rearraignment, retrial, custody, ball, discharge, correction of sentence, or other matters that may be necessary and proper.

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Such order shall constitute a final judgment for purposes of review."

- 4. Rules 567a and 759a² of the Maryland Rules of Procedure provide:
 - "Rule 567. New Trial . . . Law.
 - 0 a. Motion When To Be Filed.

A motion for a new trial shall be filed within three days after the reception of a verdict, or, in case of a special verdict or a trial by the court within three days after the entry of a judgment nisi."

"Rule 759. Motions After Verdict.

a. Motion for New Trial.

A motion for a new trial shall be made pursuant to Rule 567 (New Trial). A motion for a new trial shall be heard by the court in which the motion is pending, except that in the case of a motion for a new trial pending in the Criminal Court of Baltimore, such motion shall be heard by the Supreme Bench of Baltimore City. The court may grant a new trial if required in the interest of justice."

5. Article XV, Section 5 of the Constitution of Maryland provides:

"In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass on the sufficiency of the evidence to sustain a conviction."

² Rule 567 is a civil rule, and Rule 759 applies to criminal causes. See original Md. Rule 2b and newly revised Md. Rule 1s

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 27

JAMES V. GILES AND JOHN G. GILES, Petitioners,

STATE OF MARYLAND,

Respondent.

ON WRIT OF CENTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT

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ROBERT C. MURPHY,
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Baltimore, Maryland 21201
For Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 27

JAMES V. GILES AND JOHN G. GILES,

· Petitioners,

STATE OF MARYLAND,

Respondent.

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ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (R. 292-315) is reported at 239 Md. 458, 212 A. 2d 101. The opinion of the Circuit Court for Montgomery County, Maryland (R. 281-292) has not been officially reported.

JUBISDICTION

The jurisdictional requisites are adequately set forth in the Petitioners' Brief.

enderstand the the Delignmentation for the (A: 127-430).

QUESTIONS PRESENTED

- 1. Whether petitioners were convicted in violation of the Fourteenth Amendment to the United States Constitution by reason of any suppression by the State of material exculpatory evidence?
 - 2. Whether petitioners were denied the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution by reason of the fact that the Maryland courts have retained the power to determine the admissibility of evidence despite the Maryland constitutional provision that the jury is the judge of the law as well as the fact?
- 3. Whether the due process clause of the Fourteenth Amendment guarantees one the right to file a motion for new trial after conviction for a criminal offense; and whether petitioners were denied due process under the then applicable, but subsequently amended, procedural rule which provided that new trial motions based on newly discovered evidence must be filed within three days after judgment?

STATUTES AND BULES INVOLVED

The pertinent provisions of the Maryland Constitution, statutes, and rules appear in the Appendix to the Petitioners' Brief with the exception of Rules 728, 764 and 922 of the Maryland Rules of Procedure which are set forth in Respondent's Appendix A, infra.

STATEMENT OF THE CASE

The judgment under review is the culmination of a proceding brought under Maryland's Post Conviction Procedure Act, Maryland Code (1957), Article 27, Section 645 A-J, set forth, in pertinent part, in Appendix A of the Brief for Petitioners. Petitioners originally were convicted of rape in the Circuit Court for Montgomery County, Maryland, by a jury, on December 5, 1961. The trial court (Judge James H. Pugh) sentenced Petitioners to death. The convictions were affirmed by the Court of Appeals of Maryland, Giles v. State, 229 Md. 370, 183 A. 2d 359, and an appeal to this Court was dismissed for want of a substantial federal question. Giles v. Maryland, 372 U.S. 767. Subsequently, Petitioners moved in the trial court for a new trial on grounds of newly discovered evidence. The Motion was denied by the trial court; and the denial was affirmed by the Court of Appeals of Maryland, Giles v. State, 231 Md. 387, 190 A. 2d 627. On October 24, 1963, the Governor of Maryland, Honorable J. Millard Tawes, commuted Petitioners' sentences to life imprisonment.

Petitioners then filed a petition under the Post Conviction Procedure Act alleging that their convictions were unconstitutionally procured (R. 1-27). Following an evidentiary hearing, the Circuit Court for Montgomery County ordered a new trial on the ground that Petitioners had been denied due process of law under the Fourteenth Amendment by reason of the State's suppression of evidence at their criminal trial (R. 291-292). On appeal by the State, the Court of Appeals of Maryland, sitting en banc, reversed, two judges dissenting (R. 292-315). State v. Giles, 239 Md. 458, 212 A. 2d 101.

A. THE CRIMINAL PROCEEDINGS!

The following evidence was presented at the criminal trial:

On the night of July 20, 1961, Joyce Roberts (age 16), her boyfriend, Stewart Foster, and two other young men,

¹ The transcript of the criminal trial (R. 29-157) was admitted into evidence in the post-conviction hearing (R. 157-158).

county; Maryland, along the Patuxent River for the purpose of going swimming. By previous arrangement they were to meet several other persons there, including one of Joyce Roberts' girl friends who was to bring Joyce's bathing suit with her (R. 61). Their friends failing to appear within a few minutes, the group started to leave the area and went a short distance when the car ran out of gas (R. 35). Two of the young men set out to get gas, leaving Joyce Roberts and Stewart Foster in the stalled vehicle. The area was thickly wooded, very dark, and desolate, the hearest residence located approximately one block away, being unobservable because of the heavy foliage (R. 78).

Shortly after the others departed, the stranded couple saw four negro men (John Giles, James Giles, Joseph Johnson, and John Bowie) placing fishing gear in the trunk of Bowie's automobile, which was parked nearby. The four men guided Bowie's car past the stranded vehicle with the assistance of Stewart Foster, who inquired if they had sufficient room to pass (R. 35). Once past the stalled vehicle, three of the men (the Gileses and Johnson) began to walk back to the stranded vehicle (R. 35). Foster became frightened, rolled up the car windows, and locked the doors (R. 36). The trio demanded money and ciga-

MANAGER WILLIAMS

Foster and Joyce Roberts in the stalled vehicle (R. 32). John Giles testified that he was unaware that anyone was in the car other than Foster (R. 104); James Giles also related that he was unaware that a girl was in the car (R. 131).

Joseph Johnson did not restify at the Petitioners trial. He was also indicted for rape but his case was severed and removed to another county. His conviction was affirmed in Johnson v. State, 232 Md. 199, 192 A. 2d 506. His death sentence was commuted by the Governor to life imprisonment at the same time as the commutation of Petitioners' sentences.

rettes, but Foster told them he had neither (R. 36). The three men refused a request of Bowie that they leave with him (R. 33, 36); and Bowie drove off. An argument ensued.

The colored men went to the rear of the car where one alleged shouted: "Let's drag his fucking ass out of there and get some of that pussy" (R. 85). Other threats were allegedly made to drag Foster from the car and carnally know the girl (R. 36). One or more of the intruders then threw rocks at the automobile, shattering the windows, and allowing them to reach in and unlock the doors."

Foster then jumped from the automobile to hold off the attack and was struck in the face with a rock and rendered unconscious (R. 37). Joyce, at the same time, got out of the other side of the vehicle and fled into the woods. She had gone a short distance when she tripped and fell. Out

The Giles brothers testified at the criminal trial that Foster called them obscene racist names without provocation (R. 103, 122, 131, 133). This was denied by Joyce Roberts (R. 53), and also by Foster (R. 43), who related that he knew better than to provoke an argument especially when outnumbered three to one (R. 43). The Giles brothers also testified that Foster leaned down in the car as if reaching for a gun (R. 104, 122, 134). In statements made to the police shortly after their arrests, the Gileses denied any knowledge of the cause of the argument, and they also made no mention of Foster appearing to reach for a gun (R. 85-87, 91-92, 95).

^{*}As this happened, Foster testified:

"And I said 'You aren't going to get the girl', and they said 'Well I will kill your fucking ass' and I heard a brick go through the window and one of them said 'Let's shoot the son-of-a-bitch.'

* * I was so scared and I said 'Joyce make a run for it and I

will hold them back as long as I can'" (R. 36-37).

Sergeant Alton Duvall, of the Montgomery County Police, the first officer to arrive at the scene, placed the distance as approximately 100 feet from the automobile (R. 76); although Joyce Roberts stated that she thought she only had gone approximately 30 feet (R. 54).

of breath and unable to run further, she lay quiet in the thick underbrush trying to hide (R. 54).

The Petitioners and Johnson then separated and sought Joyce in the woods. John Giles was the first to find her. According to the girl, he laid on top of her until the other two arrived (R. 55, 66). She also claimed that she pleaded with John Giles to let her go further back into the woods so that the other two couldn't find her, telling him that he could follow her later. As to this she reasoned: "I thought if I could get away from him, I could get away from all of them" (R. 55).

Upon discovery of Joyce and John Giles by the other two (according to the testimony of the prosecutrix), the men all leaned over her, began kissing her, and one reached for the zipper on her shorts (R. 55). Joyce, according to her version, protested but was told "either you do it or we will do it" (R. 56). Completely dazed (R. 56), alone in the woods with three demonstrably violent young men, afraid for her life (R. 71), she complied with their demand and removed her shorts (R. 56). She then withstood successive rapes, first by John Giles, then by Joseph Johnson, finally by James Giles (R. 56). During the final attack, Joyce heard Foster, who had regained consciousness, cry out that he was going to get the police, but before she could call to him for help, she heard him running off (R. 56)

Joyce related that the acts of intercourse were forcibly had against her will and without her consent (R. 55-56, 64. 66. 71). According to the Giles brothers on the other

Joyce's testimony, in part, was as follows:
"A. One of the boys reached for the zipper in my shorts and I said 'No' and one of them said 'Either you do it or we will do

hand, Joyce urged and insisted that they and Johnson have intercourse with her. James Giles and Johnson accepted the "invitation" (Petitioners' Brief, p. 5); John Giles denied having intercourse despite the alleged solicitation by the prosecuting witness.

John Giles testified that he followed the person who had jumped out of the car and who had run into the woods, not even knowing at the time that it was a female (R. 110-111). He related that he was simply walking through the woods when a girl called to him (R. 104, 112); that he was not looking for and did not find her, but rather that "She found me" (R. 112); and that although she "insisted" (R. 105, 113) that they have intercourse, he refused. He remained with her five or ten minutes before the others came, according to Joyce (R. 66); for ten to fifteen minutes, according to John Giles (R. 114-115). When the others arrived John Giles testified that the prosecuting witness made the statement "I know what you boys like", and that she began to take off her clothes (R. 115).

it' and so I said 'I will' and I took my shorts and underpants off.

[&]quot;Q: Why did you do that? A. I was completely dazed. There wasn't anyone to yell to for help, there wasn't anything I could do, and they were all there standing around me.

[&]quot;Q. Did you scream? A. No, there wasn't any sense in screaming" (R. 56).

The witness also related later in her testimony:

[&]quot;A. Well the whole time I was there I was afraid to do anything against them, because I was afraid they would use violence.

[&]quot;Q. Why didn't you scream? A. I didn't know there was anyone there to scream to.

[&]quot;Q. Why didn't you hit at these boys? A. Because I was afraid they would hit back.

[&]quot;Q. And why did you let them have intercourse with you? A. Because they had chased me, and I was afraid for my life" (R. 71).

According to James Giles, he went into the woods only to look for his brother, and not for the girl (R. 124, 131). He claimed that Joyce celled to him and Johnson (R. 124); that she asked where he and Johnson had been so long (R. 124) and that "the next thing she started to take her clothes off" (R. 124). He also claimed that the girl insisted upon intercourse, made no protest, and assisted in every way (R. 127). He did not know whether John Giles engaged in intercourse with the girl, although he admitted that John spent about ten minutes with her while he and Johnson waited nearby (R. 142).

After regaining consciousness, Foster heard Joyce "whimpering" in the woods (R. 37, 43). He made his way to the nearest home where the police were called. Within minutes, at approximately 12:55 A.M., Sergeant Alton Duvall of the Montgomery County Police Department arrived on the scene. The Petitioners and Johnson fled through the woods after seeing the headlights of the police car (R. 57). The officer related that Foster was "very hysterical" (R. 74), was bleeding at the mouth, and was covered with blood (R. 74). Joyce was found lying on the ground, naked for the most part, except that she had on a white blouse (R. 74). She was sobbing and in a "semiconscious state" (R. 75). The officer and Foster had to pick . Joyce up bedily and help put her clothes on (R. 75). She and Foster were taken by ambulance to a hospital. Examination revealed that she had abrasions and scrapes of the skin over her shoulders, her knees, and her legs; that fragments of earth and leaves were adherent to her back, and that secretions containing numerous spermatozoa cells

Foster did not regain consciousness until the final attack upon Joyce Roberts was in progress (R. 56).

The Petitioners claimed that Joyce Roberts voluntarily disrobed herself, and neatly folded up her clothes (R. 115, 126).

were found in her vagina (R. 45), showing recent intercourse. Foster received eight sutures in his upper lip (R. 46, 38).

James Giles was arrested at his home the next morning, having spent the night hiding in the woods (R. 127). John Giles was arrested on July 23rd, having spent most of the two intervening days hiding in the woods (R. 117). Joyce identified James Giles at a police line-up on July 21st, and John Giles at a line-up held on July 23rd (R. 57,58).

In a statement to the police following his arrest, James Giles admitted that he had thrown rocks at the automobile: that he was aware that the automobile was occupied by a white male and a white female; that an argument had started after someone asked Stewart Foster for a cigarette. but that he did not remember what caused the argument, or what was said; that he was drunk; that he assisted in attacking Foster and later robbed him; that he and Johnson ran into the woods looking for John Giles and the white girl; that after finding them he argued with his brother as to who would be the first to have intercourse with her: that John Giles had intercourse first, followed by Johnson and then himself. He further admitted that it might have been he who made the statement, "Let's drag his fucking ass out of there and get some of that pussy" (R. 85-87). He did not remember whether the girl disrobed herself (R. 95). When asked what he would have done if he had been in Joyce Robert's predicament, he replied "Cooperate, I guess" (R. 97).

John Giles, in his statement, admitted that he was present at the crime scene; that he did not know why an argument started at the car or whether or not he personally broke any of the car windows; that when the white female jumped out of the car he immediately chased her into the woods; that he stayed with her for approximately fifteen minutes; but denied that he had intercourse with her (R. 91-92).

breaking into the car was to prevent Foster, whom they said had a gun in it, from shooting them (R. 109). No weapon of any sort was found in the car or in the area and none was introduced into evidence. It was further related by the Petitioners at the trial that Joyce Roberts told them that she was on a year's probation, didn't want to get into trouble, and if caught by the police would have to tell them that she was raped (R. 104, 105, 112, 113, 127, 140, 146). This was denied by the girl (R. 69, 70). She also denied making any statement to the effect that she had had intercourse with numerous other boys that week and that a few more would not make any difference (R. 69), as had been urged by the Petitioners (R. 112, 124-127).

The jury returned verdicts of guilty against each Petitioner without qualification as to sentence (R. 154).

B. THE POST-CONVICTION PROCEEDING

On May 11, 1964, Petitioners filed in the Circuit Court for Montgomery County a petition under Maryland's Post Conviction Procedure Act (R. 1-27), seeking to collaterally attack their convictions as having been procured in violation of the due process clause of the Fourteenth Amendment in various respects, of which the following claims survive: (a) that the State tuppressed material exculpatory evidence; (b) that the Maryland procedural rule requiring that new trial motions based on new-discovered

evidence be filed within three days after verdict prevented Petitioners from proving any newly discovered evidence.

A three-day evidentiary hearing was conducted in July, 1964, to determine the ments of the Petitioners' allegations.

Robert Boards, Jones wid him tak

1. The Alleged Suppression of Evidence.

The most significant evidence presented at the post conviction hearing involved an alleged suicide attempt by the prosecutrix and an alleged false rape claim. About five weeks after the attacks (of July 20, 1961) upon Joyce Roberts by the Petitioners and Joseph Johnson, she attended a party of Edmondston, Prince George's County, Maryland. There she had intercourse with one boy who had followed her into a bathroom, and with another in the yard outside the house (R. 23-27, 182-4, 296). Her physical resistance to these acts, if any, was slight, her main concern appearing to be that all of the boys at the party would find out and desire to have intercourse with her (R. 190).

The following morning, August 27, 1961, Joyce was admitted to Prince George's General Hospital, having taken an overdose of pills. The hospital record* showed a diagnosis of attempted suicide (R. 279); and the history section of the report showed that: "Patient raped several weeks ago. This present episode is result of parental arguing, incompatibility with parents, and difficult adjustment."

10 There was no evidence that any person connected with the State in any capacity, including the prosecution, ever inspected or was aware of the contents of the hospital record.

The Petitioners also claimed in their petition under the Post Conviction Procedure Act that their convictions were procured by the use of perjured testimony which the State induced (R. 1, 4). This claim has apparently been abandoned.

(R. 280). She was given an admitting diagnosis of psychopathic personality and placed in a psychiatric ward before discharge nine days later. The attending physician diagnosed the condition as an adolescent reaction (R. 164).

While in the hospital, Joyce was visited by a friend, Robert Bostic. Joyce told him that she had taken the pillabecause she had been raped at the August 26 party. Bostic relayed this information to Joyce's mother, without Joyce's knowledge. The prosecutrix's father then made a limplaint of the alleged rape by telephone to Lieutenant Lloyd Whalen of the Montgomery County, Police Department who told Joyce's father to contact the Prince George's County police, since the alleged rape had occurred in the latter county (R. 23-27, 179, 184, 192, 284-85, 296).

As a result of the complaint by Joyce's father to the Prince George's County police, Detective Sergeant Wheeler' visited the hospital on September 1, 1961. He did not then know that Joyce was the complainant in a rape case in Montgomery county (R. 187); nor could be remember whether he learned this fact before or after the criminal trial in December, 1981 (R. 188). As to the reason for the girl being in the hospital, Wheeler stated that he believed he had been advised that she had taken an overdose of some kind of tablets, although he was uncertain (R. 189). At the hospital, after relating the incident at the party of August 26, Joyce stated to Wheeler that she did not wish to make any complaint of rape and that she had never authorized anyone to make such a complaint for her. She further related that she would refuse to testify against the two boys if the matter was pressed. Wheeler marked the Prince George's County police file "Closed and un-

¹¹ Lieutenant Whalen was in charge of the investigation of the alleged rape of Joyce Roberts by Petitioners and Johnson (R. 195).

founded," with the consent of Joyce's father (R. 25-27, 179-85, 189-92, 296-97). Joyce also related to Wheeler that during the preceding two years she had engaged in numerous acts of intercourse with different persons inchuding one of the two boys with whom she had engaged in intercourse at the party.

Wheeler did not communicate his information to the Montgomery County authorities; he was not interviewed by the State's Attorney or police of Montgomery County, and it is clear that neither the State's Attorney nor the officer in charge of the investigation in Montgomery County knew of the facts obtained by Wheeler (R. 198-200, 252-54) 12

Lieutenant Whalen, of the Montgomery County Police, was in charge of the investigation of the alleged rape of Joyce Roberts by the Petitioners and Johnson (R. 195). When contacted by the father of Joyce Roberts concerning the incident of August 26 which had taken place in Prince George's County, he advised Mr. Roberts to contact the authorities of that county. Whalen made no investigation of the complaint (R. 199-200); and had no knowledge of any of the details of the incident (R. 199-200). He was told by Joyce's mother at a later date that Joyce had taken some sleeping pills and was hospitalized (R. 199); but Whalen was never informed that Joyce had attempted suicide (R. 198-199, 231, 297)

¹² The Court of Appeals held that for the purposes of the suppression doctrine, the prosecution was charged only with the knowledge of the Montgomery County Police, but not with knowledge of the police of other counties (R. 103). Petitioners admit that the Montgomery County police and State's Attorney were unaware of the facts obtained by Detective Sergeant Wheeler of the Prince George's County police. Petitioners' Brief, pp. 9, 11.

18 Mrs. Marion Roberts, mother of Joyce, called as a witness by the Petitioners, related that she told Lieutenant Whalen that Joyce had

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Although he was aware of the fact that Joyce's mother laid at one time taken her to see a psychiatrist.14 he did not chave any information that Joyce was mentally ill or mentally disturbed (R. 198, 201, 297, 304). - *

The State's Attorney for Montgomery County, Leonard T. Kardy, testified that although he knew prior to the trial of the criminal case that Joyce Roberts had been hospitalized for taking excessive drugs, he had no information that this was a suicide attempt (R. 251-252, 297). He made no inquiry or attempt to find out what caused the drugs to be taken (R. 252); and assumed that it might have been connected with the July 20 incident involving the Petitioners and Johnson (R. 252): He had been informed of the rape complaint in Prince George's County involving Joyce Roberts, in which the charge was made by one other than Joyce; and he also was aware that the charge had been investigated and dropped (R. 252-253, 297). He had no information to the effect that Joyce Roberts was mentally or emotionally disturbed (R. 250. 253). He received no information concerning L., reputation for chestity (R. 254); and had no knowledge of anything that reflected adversely upon her credibility (R. 255). The prosecutor related that he had in fact interviewed the prosecuting witness at length concerning the events of July 20 and felt that she was telling the truth (R. 214, 260); and that her testimony from the witness stand was consistent with prior statements she had made (R. 200). He emphatically denied concealing or suppress

taken some pills, but Mrs. Roberts denied telling Lieutenant Whalen

that Joyce had attempted suicide. In fact, the witness, herself, disclaimed knowledge that Joyce had attempted suicide (R. 231).

**Lieutenant Whalen was informed by Mrs. Roberts that Joyce had at one time been taken by her/to a psychiatrist (R. 201). The reason for the visit was not related to Escutenant Whalen, and was only known by the mother (R. 201, 304).

ing any information which he thought was admissible, exculpatory evidence (R. 260-262)

A psychiatrist, who had not examined the prosecutrix (R. 244) related in answer to a hypothetical question, that in his opinion, a teen ager's attempted suicide evidenced a mental disorder. He stated, however, that many conditions not derived from mental illness could cause an attempted suicide. He further admitted that he could not state an opinion as to the girl's mental condition at the date of the trial (R. 237-243).

The psychiatrist who had examined Joyce in the Prince George's General Hospital shortly after the alleged suicide attempt was not called to testify by the Petitionera. Petitionera also did not call the prosecutrix to testify at the hearing, although she was available for such purpose (R. 236). Other evidence, consisting of affidavits by acquaintances of the prosecutrix, was entered into the record, indicating that she was a sexually promiscuous girl.

As part of their defense at the criminal trial, the Petitioners claimed that the prosecutrix had told them at the scene of the alleged crime that she was on probation, and if caught would have to claim that she was raped. At the time of the alleged rapes (July 20, 1961) there was pending in the Juvenile Court for Prince George's County a petition alleging that Joyce was beyond parental control, and also a recommendation of the court's case worker that Joyce be placed on probation (R. 174). It was stipulated, however, that at the time of the alleged rapes Joyce Roberts

¹⁵ The psychiatrist had been summoned by the Petitioners but did not appear at the hearing. The trial judge offered to issue a warrant for the doctor and to continue the hearing in order to permit the Petitioners to have him testify at a later date. The Petitioners refused the offer (R. 172).

was not on probation in the Juvenile Court for Prince George's County (R: 174). Nor was she on probation in any other court.

Both the lower court (R. 289) and the Court of Appeals (R. 308) held that there was nothing in the record to show a withholding of evidence concerning this issue. The Petitioners also now admit that neither the State's Attorney nor the police of Montgomery County had any knowledge of facts concerning the "near probation status" of the prosecutrix (Petitioners' Brief, p. 13).16

It was shown that shortly after their arrests, an able and experienced member of the Maryland Ber, Stedman Prescott, Jr., "I was appointed by the court to represent the Petitioners. He made an investigation of the case which included, among other things, a discussion of the matter with the State's Attorney for Montgomery County, and an examination of the entire file of the procedution, including all reports contained therein (R. 214-215, 260-261). He was advised of the names of all State's witnesses (R. 261). The trial did not take place until December, 1961, months after the attorney's appointment to the case, and ample time for preparation was allowed. No other request for information or further assistance of the State's Attorney was made (R. 261).

Defense counsel learned of the facts surrounding the alleged consent of the prosecutrix from his clients and

[&]quot;Juvenile Court records were available to defense counsel under the procedure set out in Rule 922 of the Maryland Rules of Procedure (Appendix A, infra) whereby written permission of the court must first be obtained. Such permission was not sought by defense counsel. "Appointed counsel had been a member of the Maryland Bar since 1946; and had vast experience in the trial of criminal cases. He had served as an Assistant Attorney General of the State of Maryland and also as Deputy Attorney General of Maryland (R. 214).

knew this would play an important role in the defense."
He did not, however, discuss the case personally with Joyce Roberts because of her mother's denial of such permission (R. 211)." The attorney sought to examine the records of the juvenile courts in Montgomery and Prince George's Counties, but was not allowed to see those records by juvenile authorities. The juvenile authorities denied access because under Rule 922 of the Maryland Rules of Procedure (Appendix A, infra) such records may only be examined upon written permission of the court. Such permission was not sought by defense counsel prior to trial. 20

Defense counsel also admitted upon questioning by the court that he had no information that any witness committed perjury with knowledge of the State's Attorney; that he had no knowledge that the State's Attorney sub-orned perjury; and that he had no knowledge that the State's Attorney suppressed any evidence which might a have been beneficial to the Petitioners (R. 216).

There is no indication in the record that defense counsel sought to interview any of the State's witnesses other than Joyce Roberts. He had been advised of the names of all prospective witnesses (R. 261).

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The Court of Appeals pointed out: "By the Gileses version of the incident of July 20, 1961, as related to their attorney, the defense certainly had some question as to the character of the property which properly could have been investigated" (R. 306).

Defense counsel also made no request of the State's Attorney for assistance in obtaining any juvenile court records. The State's Attorney testified that had such a request been made of him, he would have helped defense counsel obtain the information sought (R. 261-262).

The Petitioners seem to infer (Petitioners' Brief, footnote No. 5, page 11) that the State's Attorney, along with Lieutenant Whalen, improperly had Joyce Roberts removed from her home and placed in "protective custody" in a State school for girls under order of the Juvenile Court for Montgomery County. The record is clear that Joyce Roberts was placed in the state school to protect her from violence at the hands of others; and that Mrs. Marion Roberts,

2. The Maryland Rule on Newly Discovered Evidence.

On November 16, 1962, nearly one year after their convictions (December 11, 1961) Petitioners filed in the Circuit Court for Montgomery County a motion for new trial based upon allegedly newly discovered evidence. The motion was denied as not being filed within the then existing three day time limit set by Rules 567 and 759 of the Maryland Rules of Procedure (Appendix A, Petitioners' Brief). The Court of Appeals of Maryland affirmed the denial on the same grounds, Giles v. State, 231 Md. 387, 190 A. 2d 627.

The Petitioners' present attack upon the constitutionality of the Maryland procedure was decided adversely to them by both the post conviction trial court (R. 291) and the Maryland Court of Appeals (R. 299). The Court of Appeals at stated that the rule was a valid and constitutional procedural requirement (R. 299).

mother of Joyce, initiated such action and requested Lieutenant Whalen to take appropriate legal steps (R. 204-206, 221-222, 226-227, 231-232, 249-251). Under no circumstances can any impropriety on the part of any State official be read into this event

priety on the part of any State official be read into this event.

M Under Maryland Rule 764 (Appendix A, infra) effective September 1, 1965, a new trial on the ground of newly discovered evidence which by due diligence could not have been discovered within three days after verdict may be granted if a motion is filed within minety days after the imposition of sentence or within ninety days after receipt by the trial court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of special

of Appeals upon affirmance of the judgment or dismissal of appeal.

There is some doubt as to the right of the Petitioners to now raise this question. The issue was decided adversely to the Petitioners at the post conviction hearing (R. 291); and although relief was granted by the post conviction trial court based upon the suppression claim, the issue of the legality of the Maryland procedural rule concerning new trial motions based upon newly discovered evidence was not properly raised by Petitioners in the Court of Appeals of Maryland because they failed to file a cross-appeal to the appeal filed by the State based on the suppression question. The Court of Appeals questioned the standing of the Petitioners to have that Court

SUMMARY OF ARGUMENT

Prosecutors should not, and legitimately cannot, be charged with constructive knowledge of information concerning a State's witness known only by persons other than those actively engaged in "the prosecution". Nor should prosecutors be charged with constructive knowledge of information contained in any remote document having information relating to a State's witness in a criminal case. The authorities and reason maintain that, for the purposes of the suppression doctrine, the prosecution at most, may be charged with knowledge of the investigating police. The information which legitimately could be said to have been known by the prosecution in this case was insufficient to support a suppression claim.

The obligation which the Petitioners seek to impose upon the prosecution (with regard to the duty not only to discover evidence, but also to disclose evidence) is nearly without limitation. The doctrine and precedent sought would have untoward effects; is not demanded by the due process clause; and, under the facts of this case, is unwarranted.

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In Giles v. Maryland, 372 U.S. 767, this Court dismissed for want of a substantial federal question the Petitioners' due process and equal protection attack upon the validity of the Maryland constitutional provision making the jury in criminal cases "the Judges of Law". That decision in-

consider the claim, and the Court of Appeals made no finding or determination that the matter was in fact properly raised (R. 298-99). The Court of Appeals stated: "Assuming, without deciding; therefore, that the appellees [the Gileses] are entitled to reassert the contentions raised below, they lack substance for the reasons hereafter stated" (R. 299).

volved an adjudication on the merits - with all of its consequences.

The Maryland Court of Appeals did not substitute its judgment for that of the jury (in an "erratically selected" class of cases or otherwise) for under the Maryland dectrine, it is the Court, not the jury which passes on the admissibility of evidence. In this case, the allegedly suppressed evidence was not admissible.

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The due process clause does not require a state to provide appellate review of criminal convictions, nor does that clause give an accused the right to a new trial based upon allegedly newly discovered evidence. The Maryland rule in existence at the time of the Petitioners' conviction, which provides that new trial motions must be filed within three days has not prevented the Petitioners from pursuing their claim of innocence. The fact that a particular time limit is set in such type of rule does not render it constitutionally invalid.

ARGUMENT

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THE PETITIONERS WERE NOT DENIED DUE PROCESS OF LAW.
THE EVIDENCE WHICH THE PROSECUTION COULD BE PROPERLY CHARGED WITH ENOWING WAS NOT MATERIAL EXCULPATORY EVIDENCE.

A. THE ENTERT OF THE PROSECUTION'S KNOWLEDGE

One of the basic questions posed by this case is: Whose knowledge constitutes knowledge of the prosecution? The Petitioners seemingly claim that at least knowledge of any state law enforcement officer is synonymous with knowledge of "the prosecution" (R. 34-38). Thus, although they

admit that the prosecutor and police of Montgomery County did not have actual knowledge of certain information known by Prince George's County law enforcement officials, the Petitioners contend that the Montgomery County officials must be charged with constructive knowledge of that information (R. 34-38).

We claim that such a proposition is unfounded in reason, unsupported by authority, and as the Court of Appeals found "would impose a practically impossible and unworkable burden on local authorities" (R. 303). The Court of Appeals stated that a reasonable rule would be to charge the prosecutor and his agents who have the duty of preparing and presenting a particular case "with knowledge of all seemingly pertinent facts related to the charge which are known to the police department who represent the local subdivision that has jurisdiction to try the case." (R. 303). Under this rule the Montgomery County prosecutor and his agents would be charged with knowledge of those facts. known to the police department of that county.

Under no circumstances does the rule give the defense a legitimate cause to complain. It may, in fact, prove to be too broad (from the prosecution standpoint) as it is. It may be argued, for example, that the rule does not limit itself only to knowledge held by those police officers of the local subdivision actually impestigating a particular case and who would be in a position to ascertain the utility of a specific bit of information, but also may encompass knowledge of facts held by any police officer of the local subdivision who is himself not only unaware of the significance of the information, but may also be unaware of the fact that a particular investigation is even being made.

Further, it is obvious that in any criminal investigation, numerous bits of evidence are accumulated. Many of

these are so innocuous that they are never used, others are clearly immaterial. Much evidence is ferreted out by the investigating police before the matter is turned over to the State's Attorney for prosecution. Every scintilla of proof need not be given in the process.

We do not here challenge the sagacity of the rule as announced, but point out that a heavy responsibility may be placed on prosecutors by it. Any extension, especially such as that sought by the defense, would have onerous implications. In this regard notice should also be taken of the fact, that the defense seeks to charge the prosecutor not only with knowledge of the police department of Prince George's County, but also with knowledge of Juvenile Court authorities of that county (Petitioners' Brief, p. 34), and even apparently with knowledge of the contents of a record of one of the hospitals of that county.

Prosecutors should not, and legitimately cannot, be charged with all of the knowledge possessed by any State law enforcement official wherever located. Nor should they be charged with the knowledge of information contained in any remote document having information relating to a State's witness in a criminal case. Such must be the case, otherwise the prosecution would be held responsible for every single piece of information relating to a State's witness in a criminal case known by any public official in the entire State without regard to the connection of such official to the prosecution of the case or his knowledge thereof.

The cases hold that for the purposes of the suppression doctrine the prosecution, at most, is charged with the knowledge of the investigating police. Barbee v. Warden, 331 F 24 842 (4th Cir. 1964); Hall v. Warden, 222 Md. 590, 158 A. 2d 316. The Petitioners have cited no authority,

and apparently nope can be found, whereby the prosecu tion has been charged with knowledge of the police of another county. See United States v. Lawrenson, 298 F. 2d 880 (4th Cir.) where information known by members of the Washington office of the F.B.I. was held not imputable to agents investigating the case who were assigned to the Baltimore office of the F.B.I.; and Taylor v. United States, 229 F. 2d 826 (8th Cir.), a case dealing with the alleged use of perjured testimony, where knowledge of the contents of a record of the United States Narcotic Bureau was held not imputable to an agent thereof, nor to a prosecutor, who had no actual knowledge of its contents. In cases dealing with the use of perjured testimony it is the knowing and intentional use of the perjury by the prosecution that renders the judgment void. See Owens v. Hunter, 169 F. 2d 971 (10th Cir.) and cases therein cited Mooney v. Holohan, 294 U.S. 103.

We are concerned, consequently, only with the knowledge of Detective Lieutenant Whalen and State's Attorney Kardy. Admittedly, neither knew of the alleged sexual promiscuity of the prosecutrix (Petitioners' Brief p. 34).

The only information which Whalen had concerning the rape complaint relating to the August 26 incident was the telephone call from the father of Joyce, whom he advised to contact the proper authorities of Prince George's County. Whalen made no investigation of the telephone complaint, and had no knowledge of any of the details of the incident (R. 199-200). The only information that he had concerning the alleged suicide attempt was that Joyce had taken some sleeping pills and was hospitalized (R. 199). This information was supplied at a later date, apparently by Mrs. Roberts (R. 199). He was nover informed that Joyce Roberts had attempted suicide; and his denied any knowledge that Joyce intentionally took the overdose of pills 000

(R. 198-199, 231, 297). He did not have any information that Joyce was meritally ill or mentally disturbed (R. 198, 201, 297, 304). He was aware that Joyce at one time had been taken by her mether to a psychiatrist, but did not know the reason (R. 201, 304).

Kardy knew that a rape complaint had been made in Prince George's County involving Joyce Roberts; but he was also aware that the charge was not made by Joyce, and that the matter was investigated and dropped (R. 252-253, 297). He also knew that Joyce had been hospitalized for taking excessive drugs; but he had no information that this was a suicide attempt (R. 251-252, 297). He did not inquire into what caused the drugs to be taken (R. 252), and suspected it might have been connected with the occurrence of July 20, 1961 (R. 252, 290). He had no information that Joyce was mentally or emotionally disturbed (R. 250, 253).

Neither Whalen nor Kardy had any knowledge of facts concerning the "near probation status" of the prosecutrix (R. 206, 246, Petitioners' Brief, p. 13). The facts concerning this were known only by Juvenile Court authority in Prince George's County (Petitioners' Brief, p. 34).

We claim that there was no due process violation because of the failure of "the prosecution" to relay the information which it may legitimately be charged with knowing.

B. THE ALLEGED LACK OF DEFENSE KNOWLEDGE

The Petitioners deny that they had any obligation to seek the allegedly suppressed evidence, or that they are chargeable with knowledge of any such evidence (Peti-

Mrs. Marion Roberts, mother of Joyce, corroborated the testimony of Whales. See footnotes Nos. 13 and 14, supra).

tioners' Brief, pp. 19-21, 39-40). However, all of the information allegedly suppressed was available to a diligent defense.

Much attention is directed by the Petitioners to the fact that the Montgomery County State's Attorney allegedly violated a duty owed to them by not advising them about what he knew, and what he should have known or should have discovered by "rudimentary diligence" (Petitioners' Brief, p. 35). The basic fact, however, which is conveniently overlooked, is that the State's Attorney for Montgomery County turned over his entire file to defense counsel for close scrutiny (R. 214-215, 260-62). In the file lay the name of Detective H. Lloyd Whalen, the man in charge of the investigation of the case; the man who received the original telephone call from the father of the prosecutrix concerning the incident now allegedly suppressed, the man who knew that Joyce Roberts had taken some sleeping pills and was hospitalized; the man who knew that Mrs. Roberts had taken her daughter to a psychiatrist, the man who was available for questioning by the defense; but the man who was not questioned.

In fact, although defense counsel had been advised of the names of all prospective State's witnesses (R. 261), there is no indication in the record that the defense sought to interview any of them other than Joyce Roberts. Once permission to interview Joyce was denied by her mother, counsel made no further attempt to speak with her and made no effort whatsoever to seek assistance to that end. Nor did defense counsel make an attempt to comply with the Maryland requirement that written permission of the Juvenile Courts be obtained before records of such courts may be examined (Maryland Rule 922, Appendix A, lafts); and no request for assistance was made of the State's Attorney who testified that had such a request been made

of him, he would have helped defense counsel obtain the information sought (R. 261-262).

The Court of Appeals aptly pointed out: "By the Gileses version of the incident of July 20, 1961, as related to their attorney, the defense certainly had some question as to the character of the prosecutrix which properly could have been investigated. In view of this and as evidenced by the examination of witnesses at the criminal trial, the defense must have known of the prosecutrix's general reputation for unchastity and that she was a sexually promiscuous girl" (R. 306).

There should be no duty on the prosecution to disclose evidence that is available to the accused. See Jordon v. Bondy, 114 F. 2d 599 (D.C. Cir.). The defense may be as well able to explore outside sources of information as the prosecution. United States v. Lawrenson, 298 F. 2d 880 (4th Cir.). See also United States v. Garsson, 291 F. 646, 649.

Further, in Brady v. Maryland, 373 U.S. 83, 87, it was stated:

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt be to punishment, irrespective of the good faith or bad faith of the prosecution." (Emphasis supplied.)

The following appears later in the same opinion:

"A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant." (Emphasis supplied, 373 U.S. at 87-88.)

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From the above it is clear that, under the circumstances of this case as herein outlined, a defense request for disclosure is a prenequisite to application of the suppression doctrine. It is also clear that there was no such request in the case at bar (Petitioners' Brief, pp. 19-20).

C. THE CASE CONSIDERED IN PROPER PROSPECTIVE

In order to grant relief to the Petitioners in this case this Honorable Court must hold, in effect, that the due process clause of the Fourteenth Amendment imposes upon State prosecuting authorities the duty not only of representing the public, but also of representing an accused to the extent of not only disclosing, but also discovering evidence which might be considered useful. The Petitioners seek to have this obligation imposed regardless of the admissibility of the evidence, its merely cumulative effect, its equal availability to the defense, and its probable probative effect. The Respondent maintains that the due process clause does not impose so broad an obligation.

The claim is made that in all suppression of evidence cases the test to be applied is "whether the undisclosed evidence, if revealed, might have affected the outcome of the trial" (Petitioners' Brief, pp. 21-22)." Stripped of its

by the federal courts, where a new trial is sought on the ground of newly discovered evidence, and is limited only to cases of "recantation or where it has been proved that false testimony was given at the trial." United States v. Hiss, 107 F. Supp. 128, 136 (S.D.N.Y.), aff'd 201 F. 2d 372 (2d Gir.); Kyle v. United States, 297 F. 2d 507 (2d Gir.); Larrison v. United States, 24 F. 2d 82 (7th Gir.). In other situations where a new trial is sought the federal courts have generally applied the rigorous rule announced in Berry v. State of Georgia, 10 Ga. 511, 527, i.e. "the newly discovered evidence would probably produce an acquittal." Iohanson v. United States, 32 F. 2d 127, 130 (8th Cir.), Under either rule many additional factors are to be considered.

obscuring verbiage, the Petitioners' claim is one that would require all State authorities (not only those actively enregard in the prosecution) to become co-counsel for the defense. They allege that any useful information (not evidence) withheld by any official of the State amounts to a denial of due process if the State official had knowledge of the information and the defense did not. They seek a rule nearly without limitation; one in which other equally important factors are overlooked; one in which any evidence that "might" have an effect upon the outcome of a criminal trial shall be considered material regardless of whether the evidence is admissible and useful in the sense that it contradicts trial evidence; regardless of whether the evidence was actually known by the prosecution; and regardless of whether an accused may be prejudiced.30 In determining materiality these factors must of necessity be considered.

Especially when considered in light of the evidence presented in the case at bar, such a rule as that sought by the Petitioners would have an untoward effect upon the conduct of criminal prosecutions and would even tend to perhaps put a premium on slovenly trial preparation by defense counsel. Applied to the facts of this case it would mean that any State official with information concerning a participant in a State criminal trial would have the duty of invariably disclosing such information or else run the risk of a court, at some later date after trial and appeal,

Prejudice to an accused is said to be one of the central matters of inquiry. Barbes v. Warden, 331 F. 2d 842. See Note, 60 Col. L. Rev. 858 (1960). The Duty of the Prosecutor to Disclose Exculpatory Evidence. The author there suggests that if a rule is to be applied to cases dealing with the passive non-disclosure of evidence it would be "whether it is reasonably likely that a different result would have been reached." 60 Col. L. Rev., supra, at p. 863. This test is not far removed from the "would probably" standard of Berry v. State of Georgia, supra, footnote 25.

ruling that such information may have helped the defence and that the failure to disclose it was a "suppression." It would, at the very least require all prosecutors to throw open their complete files to all defendants and allow them to pick and choose for a defense. This would apply regardless of whether under available rules of discovery and inspection the information could legitimately be obtained."

Ultimately it would mean that the State, to be secure, must investigate for a defendant or run the risk of the defendant later claiming he was not aware of any particular bit of information, and that such information was suppressed, irrespective of the lack of due diligence in preparing his own case. We do not think the Constitution contemplates any such action.

We maintain that whatever the proper test may be, the one sought by the Petitioners is improper. This is so not only because of the bread implications that may be read into it, but also because the due process clause, as it has been interpreted in cases dealing with the passive non-disclosure of evidence, has at its roots the desire only to avoid a trial that may be said to be fundamentally unfair.

Failure to disclose evidence that would have completely exonerated the accused, United States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (N.D. III.); knowing use of perjured testimony, White v. Ragan, 324 U.S. 760; Pyle v. Kansas, 317 U.S. 213; Curran v. Delaware, 259 F. 2d 707 (3d Cir.); failure to correct false testimony, Napue v. Illinois, 380 U.S. 264; Alcorta v. Texas, 365 U.S. 28, are all clear examples of conduct constituting a denial of due

[&]quot;Rule 728 of the Maryland Rules of Criminal Procedure is set forth in Appendix A, infra. The Maryland rule is patterned after Federal Rule 16 of the Federal Rules of Criminal Procedure. See Kardy v. Shook, 237 Md. 524, 207 A 2d 83.

process. The guarantee of due process extends beyond the examples enumerated but the criteria that render other conduct in this area constitutionally impermissible have not been clearly defined. See generally, The Duty of the Prosecutor to Disclose Exculpatory Evidence, 60 Col. L. Rev. 858 (1960). What is made clear, however, is that the object is not a perfect trial, but only the avoidance of an unfair trial Brudy v. Maryland, 373 U.S. 83. The authorities have recognized that in finding a violation of due process the State action must go "beyond the line of tolerable imperfection" and thus fall into the area of fundamental unfairness. Curran v. Delaware, 259 F. 2d 707 (3d Cir.); Barbee v. Warden, supra. The due process clause clearly does not make mandatory a trial free ofall error. "Tolerable imperfection", though not necessarily desirable, is acceptable. We claim that in this case "the line of tolerable imperfection", if approached at all, has not been violated. No amount of eloquence or strained semantics on the part of the Petitioners can convert the action of the prosecution in the case at bar into action fundamentally unfair or violative of due process of law.

A great many cases are cited by the Petitioners in support of their contention. Yet an analysis of those cases shows that the evidence suppressed was directly contrary to testimony on behalf of the State or evidence introduced by the State, or directly supported testimony on behalf of the defense or evidence introduced by the defense. In other cases the conduct of the prosecution was clearly reprehensible.** The evidence in the instant case was not

The cases relied on by the Petitioners are easily distinguishable from the case at bar. For example, in Napus v. Illinois, 360 U.S. 264, the improperly suppressed evidence concerned the prosecutor's promise of leniency to a witness who denied on the stand that he had been promised the same. In Brady v. Maryland, 373 U.S. 83, a statement of a co-defendant was purposely withheld by the State

of this character but dealt with specific acts (an alleged false rape claim and an alleged suicide attempt) relating remotely to the credibility of the prosecuting witness and was not directly contradictory of any item of her testimony at the trial.²⁰

1. The Alleged False Rape Claim.

To hold that the prosecution was fundamentally unfair in this case would be to write into the law an entirely new suppression rule. That such should spring from the facts

in which the co-defendant admitted killing the victim. This was the contention of the defendant. In Barbee v. Warden, 331 F. 2d 842 (4th Cir.) a police department ballistic report and fingerprint tests which cast grave doubt upon the accused's involvement in the crime were suppressed. In Griffin v. United States, 183 F. 2d 990 (D.C. Cir.) the principal defense of the accused was that the deceased had attacked him and the evidence suppressed concerned an open knife in the pocket of the deceased. In United States ex rel. Thompson v. Dye, 221 F. 2d 763 (3d Cir.) the defense in the case was that the accused was intoxicated. The prosecution called to the stand a police officer who restified that the defendant did not appear intoxicated to him, but did not call to the stand a policeman who would have testified to the contrary. This case was made worse by the fact that the prosecution stated that all of the officers would testify to the same effect as the officer called. In United States exrel. Almeida v. Baldi, 195 F. 2d 815 (3d Cir.) the State produced evidence tending to show that the defendant had fired the fatal shot, while the State deliberately suppressed evidence to the contrary. In Unité States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (N.D. Ill.), the defendant had been prosecuted for rape, and the undisclosed evidence was a report of a medical examination of the prosecutrix which showed that she was not raped. In Griffin v. United States, supra; Napue v. Illinois, supra; United States ex rel. Almeida e. Baldi, supra; United States ex rel. Thompson v. Dye, supra; and People v. Savvilles, 1 N.Y. 2d 554, 136 N.E. 2d 853, it should be noted that the prosecutor himself had full knowledge of the information that was withheld. In Curren v. Delautore, 259 F. 2d 707 (3d Cir.), a high ranking police officer in charge of the investigation destroyed statements of defendants which would have substantiated their claim, and the officer also gave perjured testimony.

If knowingly false testimony had been offered concerning these incidents credibility would be an appropriate subject of inquiry. See Napue v. Illinois, supra; and People v. Savoides, supra.

of this case is unwarranted. The elleged rape claim by the prosecutrix jurned out to be not only not made by the prosecutrix but actually denied by the prosecutrix in her statement to Detective Wheeler. She stated that she had not made a claim of rape, was not making one, and if the charges were placed she would refuse to testify (R. 190, 184). Even in those States where evidence of a false rape claim is admissible, the claim must in fact be made, and by the prosequirix. 58 Am. Jur., Witnesses §682; Annotation, Impeachment or Cross-Examination of Prosecuting Witness in Sexual Offense Trial by Showing. that Similar Charges Were Made Against Other Persons, 75 A.L.R. 2d 508. The record shows that the prosecutrix did not make a complaint. Therefore, she cannot be said to have made a false rape claim. There was no evidence from which a conclusion could have been drawn that since a false rape claim was made by the prosecutrix on one occasion it raised doubt as to the validity of the claim against the Petitioners.

Also, in Maryland, specific acts of misconduct are not admissible to affect the credibility of a witness. Shartzer v. State; 63 Md. 149; Humphreys v. State; 227 Md. 115, 175 A. 2d 777. There is no requirement that the victim of the crime of rape be chaste, for the crime is the same to force even a concubine or harlot, Humphreys v. State; supra; 4 Blackstone, Commentaries 213. Evidence in regard only to the general reputation of the prosecutivix for truth and veracity; or for chastisy is admissible in Maryland, not evidence of specific acts of intercourse with others. Shartzer v. State, supra; Humphreys v. State, supra, in Rau v. State, 123 Md. 513, 105 A. 567, it was held that evidence of a prior false rape claim was not admissible to impeach the credibility of the prosecuting witness.

The Petitioners argue, however, that the effected repacturation would have been admissible to impose Joyce Roberts' credibility as indicative of mental Ulness or emotional disturbance (R. 25). They claim that her conduct was indicative of nymphomania, a type of mental Illness and cite cases in which such evidence was held admissible. This allegation is completely unsupported by the record and, as the Court of Appeals pointed out, "to conclude that such an illness existed in the case at her would be to engage in sheer speculation and conjecture." (R. 307). Further, even assuming that the prosecutrix may be said to have been suffering from nymphomania, there is nothing in the record to show either that she consented to the acts of the Petitioners because of this or that her competency as a witness was impaired.

The only possible use the defense could make of the facts surrounding the incident of the alleged false rape claim would be to show what the defense already knew, that the prosecutrix was enchaste. Thus, at most, this evidence was merely cumulative.**

2. The Alleged Suicide Attempt.

We have already pointed out that at the time of the criminal trial the prosecution did not have actual knowledge that Joyce Roberts had attempted suicide. The prosecution knew only that she had taken an overdose of pills and was hospitalized. Therefore, unless the knowledge of Sergeant Wheeler along with the contents of the report of the Prince George's General Hospital may be imputed to the prosecution, there is no basis upon which a sup-

[&]quot;Merely cumulative or impeaching" evidence is not sufficient to support a molion for new trial on the grounds of newly discovered evidence in the faderal courts. See Mesarock v. United States, 352 U.S. 1; Johnson v. United States, 32 F. 24 127 (8th Cir.).

pression claim may be founded. Further, even if this knowledge may be said to be chargeable to the prosecution, failure to divulge it did not deny the Petitioners any constitutional right.

At the post-conviction hearing there was no evidence. that anyone connected with the State in any capacity was aware of the contents of the record of the Prince George's General Hospital which contained the only evidence that Joyce Roberts had attempted suicide. Not a single witness testified that the overdose of pills taken by the prosecutrix was in fact an attempted suicide or was so told by the prosecutrix. The significance of the failure of the Petitioners to have the prosecutrix and the treating psychiatrist testify should not go unnoticed. Joyce Roberts was the singularly most knowledgeable person who could testify as to whether she had in fact attempted to commit suicide. The only other witness who could testify on the matter was her psychiatrist, whose testimony the Petitioners did not think sufficiently important to require the hearing continued until he could be available to testify. Mrs. Marion Roberts, mother of Joyce, even disclaimed knowledge that her daughter had taken the pills in a suicide attempt (Footnote No. 13, supra). Sergeunt eler never relayed his information to the prosecution.

Assuming the attempted suicide to have been proven as such, the Petitioners claim that alleged evidence would be admissible to show that the prosecutive was mentally incompetent as a witness and to impeach her credibility. As already pointed out, in Maryland credibility must ordinarily be attacked by evidence of general reputation for truth or veracity or material contradictory facts. Also, as the Court of Appeals pointed out, even if the defense had known of all the information later established, the record did not disclose a legality sufficient basis upon which an

opinion could be predicated that she was either mentally incompetent on the date of trial or that her testimony was not to be believed. A psychiatrist, who had not examined the prosecutrix, related in answer to a hypothetical question, that in his opinion, a teen ager's attempted suicide evidenced a mental disorder. He pointed out, however, that many conditions not derived from mental illness could cause an attempted suicide. He further admitted that he could not state an opinion as to the girl's mental condition at the date of the trial (R 237-243). The record is devoid of evidence that the prosecutrix was unable to perceive and describe accurately what had transpired, or that she was in any way biased against a class (men) to which the accused belong, as the Petitioners claim.

The prosecutor, with the limited information he had at the time; thought that the incident may have been related to the rape in which the Petitioners were involved. The hospital record (of which the prosecutor had no knowledge) even stated: "Patient raped several weeks ago" (R. 280). Certainly it would not be unreasonable for a jury to conclude that an attempted suicide by a teen ager was an indication of emotional disturbance caused by an attack upon her by the Petitioners. Yet, had the prosecution sought to introduce any evidence as such, the defense would certainly have claimed it to have been prejudicial.

Since the proof introduced at the post-conviction hearing actually showed that the alleged suicide aftempt was the outgrowth of an incident totally unrelated to the one for which the Petitioners were convicted of rape, its probative value was lacking. In light of the fact that this evidence in no way mounted up to showing the prosecutrix was incompetent as a witness, or in any way would have contradicted any of her trial testimony, any suppression did not amount to a denial of due process.

Evidence tending to show a mental condition resulting in a stricide attempt or mental treatment at a time prior to the trial, and not contemporaneous to the matter being testified about, should not be admissible as impeaching the credibility or reliability of a witness. See Garrett v. State, 105 So. 2d 541 (Ala.).

The dangers of a contrary rule far outweigh any salutary effect that may be obtained. If such a requirement existed, for example, victims of sex crimes might be deterred from disclosing such offenses. Such a rule would also lead to the opening of the trial courts to a continuous parade of psychiatric experts, who could neither testify to the guilt or innocence of the accused, who could never testify positively to the veracity of the testimony offered by the witness, and whose only usefulness would be to ponder the hypotheticals of whether or not the witness may tend to fabricate. The inexact nature of psychiatric science gives no assurance that such a process would lend assistance in the search for truth. See United States v. Dildy, 39 F.R.D.

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The Cases relied on by the Petitioners evidencing a contrary result are not persuasive. For example, State v. Poolos, 241 N.C. 382, 85 S.E. 2d 342, apparently the only case directly stating that evidence of a suicide attempt is admissible to attack a witness' credibility, approved the rule without citation of authority. In People v. Cowles, 246 Mich. 429, 224 N.W. 387, opinion evidence that the prosecutrix was a pathological falsifier, a nymphomaniac, and a sexual pervert was admitted without objection. In Ashley v. Texas, 319 F. 2d 80 (5th Cir.), the state suppressed evidence of two psychiatrists that the defendants were insane and therefore unable to even stand trial. In Powell v. Winner, 287 F. 2d 275 (5th Cir.) the prosecution suppressed evidence of the insanity of a witness and also evidence of a statement made by the witness to the prosecutor in contradiction of trial testimony.

3. The "Near-Probation Status" of the Prosecutric.

The Petitioners' claim concerning the "near probation status" of the prosecutrix, determined adversely to the Petitioners in both the Court of Aposs and the post-conviction trial court, is devoid of arit, there being nothing in the record to show a withholding of evidence concerning this issue, even assuming, for argument purposes, it to be significant. The Petitioners admit that neither the State's Attorney nor the police of Montgomery County had any knowledge of facts concerning this matter (Petitioners' Brief, p. 13).

Also, juvenile court records were available to defense counsel under the procedure set out in Rule 922 of the Maryland Rules of Procedure (Appendix A, infra).

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THE DECISION OF THE MARYLAND COURT OF APPEALS
DID NOT DENY PETITIONERS THE EQUAL
PROTECTION OF THE LAWS.

Petitioners erroneously indicate (Petitioners' Brief, p. 40) that the Maryland Court of Appeals "virtually conceded" that the evidence concerning the second rape accusation and attempted suicide was admissible in evidence, and therefore argue that they were denied the equal protection of the laws in view of Maryland's provisions that the jury is the judge of both the law and the facts (Maryland Constitution, Article XV, §5, Appendix A of Petitioners Brief). They claim that the Maryland Court of Appeals substituted its appraisal of the exculpatory value of the allegedly suppressed evidence for that of the jury in an "erratically selected" class of cases. The simple answer is that the Maryland Court of Appeals did not hold, nor did it "virtually concede", that such evidence was admissible. The Court

pointed out that specific acts of misconduct are not admissible to affect the credibility of a witness in Maryland. for such must be attacked by evidence of general reputation for truth or veracity or material contradictory facts; and that when consent is at issue, only general reputation for unchastity is admissible in evidence, and specific acts of misconduct are not admissible to establish lack of chastity (R. 306). What the Court did state is that even assuming the evidence were admissible, for the purposes of argument, it was not material or exculpatory as a matter of law, and failure to disclose any such evidence, admissible or not, did not amount to a denial of due process (R. 304-306). The Court then did not substitute its judgment for that of the jury, for despite the Maryland provision on the authority of the jury, supra, the courts have retained the power to determine the admissibility of evidence. See Brady v. Maryland, supra, where it was pointed out that "Maryland's constitutional provision making the jury in criminal cases 'the Judges of Law' does not mean precisely what it seems to say," (373 U.S. at p. 89), and that it is the court, not the jury, which passes on the admissibility of evidence." that the Maryland Court o

More importantly, in Giles v. Maryland, 372 U.S. 767, this Honorable Court dismissed "for want of a substantial federal question" an attack by these Petitioners upon the constitutionality of this same provision. That decision involved an adjudication on the merits — with all of its consequences.

lated Court of Appeals did not held for did it (virtually consider that such evidence was admissible. The Court

The changes which have been made in the Maryland doctrine since its initial passage are well known to this Honorable Court. See Brady v. Maryland, supra; Giles v. Maryland, 372 U.S. 767.

the right to file a motion form we trial after econtinion for THE MARYLAND PROCEDURAL RULE WHICH REQUIRESD TIMELY NEW TRIAL MOTIONS BASED UPON NEWLY DISCOV. ERED EVIDENCE DID NOT DENY THE PETITIONERS DUE PRO-CESS OF LAW.

Even assuming that this issue is properly before the Court (see footnote 23, supra), it affords no ground for relief. Petitioners contend that under Rules 567a and 759a of the Maryland Rules of Procedure (App. A 3 of Petitioners' Brief), newly discovered evidence is not available as a ground for setting aside a conviction unless a new trial motion is filed within three days after verdict. Such a claim is now moot under Maryland Rule 764 (Appendix A infra), which became effective September 1, 1965. Under Maryland Rule 764, Section b, subsection 2, a new trial on the ground of newly discovered evidence which by due diligence could not have been discovered within three days after verdict may be granted if a motion is filed within ninety days after the imposition of a sentence or within ninety days after receipt by the trial court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of the appeal.

In any event, regardless of any procedural time limit, this Court has stated that there is no constitutional right to a new trial based upon newly discovered evidence. In Townsend v. Sain, 372 U.S. 293 at p. 317 it was said:

"... [T]he existence of newly discovered evidence rela vant to the guilt of a State prisoner is not a ground for relief on federal habeas corpus."-

Such a statement could not have been made if due process required a new trial on newly discovered evidence. See also Brown v. State, 237 Md. 492, 498, 207 A. 2d 103, where it is pointed out that due process does not guarantee one the right to file a motion for new trial after conviction for a criminal offense; and Griffin v. Illinois, 351 U.S. 12, 18, stating there is no due process right even to an appeal.

Also see Cobb v. Hunter, 167 F. 2d 888 (10th Cir.).

The Petitioners' citation of Rule 33 of the Federal Rules of Criminal Procedure permitting two years after final judgment for a Motion for a New Trial based upon newly discovered evidence to be filed argues to the contrary of the proposition advocated by the Petitioners since under their theory any time limitation on such a motion would be a violation of due process. Under their theory Rule 33 is just as unconstitutional as the Maryland Rule.

CONCLUSION

For the above reasons the judgment below should be affirmed.

Respectfully submitted,

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Thomas B. Finan,
Attorney General of Maryland,
Rosser C. Murphy,
Deputy Attorney General,
Donald Needle,
Assistant Attorney General,
For Respondent.

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APPENDIX A

STATUTES AND RULES INVOLVED

Rule 728 of the Maryland Rules of Procedure (Vol. 98, Md. Ann. Code, 1957) provides:

"Rule 728. Discovery and Inspection.

a. Generally.

Upon motion of a defendant and upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable, the Court, at any time after indictment, may order the State's Attorney or other person pursuant to an order to be passed as provided by section b of this Rule:

1. Objects from Defendant or by Process.

To produce and permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects obtained from or belonging to the defendant or obtained from others by seizure or by process. the fully such period the court as

2. Defendant's Statements.

To furnish the defendant the substance of any oral statement made by him which the State proposes to produce as evidence to prove its case in chief, a copy of any written statement made by him, and the labstance of any oral confession made by him.

3. Names of Witnesses. Stored of word . . To furnish the defendant a list of the names and addresses of the witnesses whom the State intends to call to prove its case in chief. who we have wear a

b. Porm of Order combine bets vious by wen to

An order under this Rule shall specify the time, place and manner of making the production, impection, observations and of taking the copies and photographs and may prescribe such terms and conditions as are just mittee on a putting betting the course I family Je 1965 anesteem, efective bearings to the

c. Common Law Discovery Preserved.

Nothing in this Rule shall limit the inherent common law power of the court to require or permit discovery."

Rule 764° of the Maryland Rules of Procedure (1965 Cum. Supp.) provides:

"Rule 764. Revisory Power of Court.

a. Illegal Sentence.

The court may correct an illegal sentence at any time.

b. Modification or Reduction — Time for.

1. Generally.

For a period of ninety (90) days after the imposition of a sentence, or within ninety (90) days after receipt by the court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of appeal, or thereafter, pursuant to motion filed within such period, the court shall have revisory power and control over the judgment or other judicial act forming a part of the proceedings. The court may, pursuant to this section modify or reduce, but shall not increase the length of a sentence. After the expiration of such period, the court shall have such revisory power and control only in case of freud, mistake or irregularity.

2. Newly Discovered Evidence.

The court may, pursuant to a motion filed within the time set forth in subsection 1 of this section, grant a new trial or other appropriate relief on the ground of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under section a of Rule 759 (Motion after Verdict)."

^{*}Rule 728 and Rule 764 are included in chapter 700, entitled "Criminal Causes." Rule 764, section b, subsection 2 was added by a 1965 amendment, effective September 1, 1965.

Rule 922 of the Maryland Rules of Procedure appears in Chapter 900, entitled "Juvenile Causes". It provides as follows:

"Rule 922. Records-When May Be Examined.

A person having a direct interest in a case may examine any part of the record thereof, except medical and case histories and other reports which the court may designate confidential. Such person may also examine such histories and confidential reports with prior written permission of the court. The court may, however, from time to time, designate by general orders persons or agencies who may inspect any record, or specific classes of records, without additional written permission. Except as provided herein, no other person may examine any juvenile record, including the docket, without prior written permission of the court."

IN THE

Supreme Court of the United States

October Term, 1966

NO. 27

and Warrell burner for

JAMES V. GILES and JOHN G. GILES, Petitioners

The state of

STATE OF MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

REPLY BRIEF FOR PETITIONERS

We will comment on two sentences in the State's Brief.

1. It is said (State's Br. 26), "There should be no duty on the prosecution to disclose evidence that is available to the accused."

In the first place, the assertion is not relevant to this case. As the Court of Appeals found, the State's Attorney and Lieutenant Whalen had knowledge of Joyce Roberts' attempted suicide and second rape accusation (Pet. Br. 32). The defense did not have, and was not Yound to have, such knowledge (Pet. Br. 39). And it would be manifestly absurd to suggest that the defense should have suspected either unusual occurrence.

The information known to the prosecution was therefore not available to petitioners. By the same token there was not available to them the additional material information which defense counsel would have readily discovered if the prosecution had disclosed what it knew (Pet. Br. 33-34).

The Court of Appeals recognized that the prosecution was under a duty to disclose evidence in its possession that could "reasonably be considered admissible and useful to the defense" (R. 304). It made no attempt to absolve the prosecution of our accusation that this duty had been breached. To the contrary, the court proceeded on the assumption that there was a breach, but affirmed on the erroneous basis that the breach was not prejudicial (R. 304; Pet. Br. 11-12, 23-25).

The State's proposition that the prosecution should have no duty to disclose evidence that is available to the accused, in addition to being inapplicable here, is unfortunate and unsound. The assertion disregards the superiority of the State's resources, particularly in a case involving indigent defendants imprisoned before trial, and the principle that the State's responsibility in a criminal case is not to convict but to see that justice is done. Because of these factors a prosecution's non-disclosure can not be excused by negligence of the defense where that exists. Levin v. Katzenback, 363 F.2d 287 (D.C. Cir. 1966); Pet. Br. 40.

There is, furthermore, a difference in the quality of the respective faults when a prosecutor does not reveal exculpatory information which he knows and which an unknowing defense could have acquired by reasonable diligence and competence. In that situation, the prosecutor's failure to disclose amounts to taking advantage of a defense mistake or ineptitude in order to facilitate convicting (and in a capital case executing) possibly innocent persons: Even if this advantage is taken out of thoughtles ness rather than wilfulness, the prosecution's neglect is worse than that of the defense because,

to borrow from tort terminology, the prosecution had the last clear chance to avert the disaster caused by errors on both sides.

2. According to the State, a strict rule of prosecution disclosure "would, at the very least require all prosecutors to throw open their complete files to all defendants and allow them to pick and choose for a defense" (State's Br. 29).

This seems a peculiar observation in a Brief which simultaneously boasts (p. 25) that the State's Attorney in this case "turned over his entire file to defense counsel for close scrutiny."*

In any event, the State's fear is unwarranted. If a prosecutor has in his possession exculpatory information, he will ordinarily have no difficulty in deciding whether or not the defense will have the same information. If he concludes that the defense will not, then he should obviously disclose the information (not his "complete file") in advance of the trial. If the prosecutor has not made an advance disclosure on an erroneous supposition that the defense has the knowledge, the error will become apparent at the trial — frequently after the defense has introduced its evidence. In that event, the prosecutor should disclose the exculpatory information before the trial is closed.

^{*} The State suggests (Br. 25) that defense counsel was neglicated in failing to interview Lieutenant Whalen, whose name was no doubt in the file and who knew about the attempted suicide and second rape accusation. But surely defense counsel cannot be faulted for failing to realize that the police (and the State's Attorney) had neglected to put important information in the file. The fact is that the file, sadly incomplete because of the non-recording of known relevant information and the inadequacy and bias of the investigation, was likely to lull counsel into the erroneous belief that there was no evidence helpful to the defendants other than their own testimony.

There may be other situations in which a prosecutor is justified in delaying disclosure of exculpatory information. But in no event is a prosecutor justified in letting a case end while keeping to himself material exculpatory evidence not known to the defense, the judge and the jury.

Respectfully submitted.

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Conly the most strained reading of the materials before us can seplain away the questions taked by the report riskous the sid of further inquiry. A second report flied by Sergeant Dutell who was first at the seem of the incident; for from proves that John Giles penetrated the girl. He report recites that the girl "stated that two of the second had entered her and that the third had tried but also up when he saw the lights inclined. While this statement would seem to indicate that John Giles, who was the first to attempt intercourse, penetrated the girl it must be read in light of the fact that Duvall's report to a two page, third-person summary representing what had transpired things the tension and heats moments immediately after the incident, when the girl was nearly hysterical according to police testimony. The other report, in contrast, in 22 pages hour, was put together over at least a three-day period, and emission extensive quotations of the girls story takes district in the relative calm of the police station after the girl had been treated and test incidents her relation in

The record before in affirmatively thereometricly that you train in College and Mr. Kardy was expressed in present, a seek the report variety that College trained it the continue that were the report variety and had read to the significant variety and before that read to the significant variety. At the particular training flatter was exact. The respectively to the report variety was exact. The respectively to the respectively to the respectively to the respectively to the respectively.

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treals no confusion on the latter paint. The spoke there of intercourse as a "process," and at one point stated that the second of the goaths "had intercourse for shout ten minutes and reached a climax." The Sho said of John Giles not that he falled to reach tellimic bit that he falled to "intert" because he 'could not got, an ercoson. Of course it to possible that the was confused despite this criterious and that John Giles section oil persentation. But it is not our place to deside these beater oil persentation. But it is not our place to deside these beater sides to justify remainding this case for regresselession rather shan desiding the broader constitutional question.

Original trial counced testified at the posseconvertion

Griginal trial soumed testified at the prospersion proceeding that he had even the prospertion's file before trial, including the police superts. Since the reports were not promoctly it is pure speculation to combule that trial council, and in fact even the reports now before us And If it were proper to resolve this question summer petitioners, the Court of Appeals might operationless regard as inquiry to be in order to secretain trial council's research for not making one of the reports in support of the defense he was directing no behalf of petitioners. Finally, the determination of these question sections would still leave open the question whether the Court of Appeals reight regard the struction as one in which the procession, was under a duty to disclose the description was indeed to descript the procession to the trial sudget the pour state! in

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the opinion that, where there is doubt as to what about the chiefficied whether or not a doubt at the whother or not a district the district at the state of the chief the district at the state of the chief at the chief the chief at the chief at the chief at a chief the chief the chief at a chief the chief

cases for remarks were solven our processor of motiving supervising marker in order to wood strength constitutional qualities by allowing states counts to a low with which might deprice of the base. Goester mample, fortunation of the base of the U. E. 200. We follow this principle behind to has at case to the time and the same. This Coate has reasonable behind to has at case to the time and made in the same. This Coate has reasonable behind to has at case to the time and made in the time and the time and the time time to the time time to the challenge of the time time to the time to the challenge of the challenge of the time time to the challenge of the challenge of the time time to the challenge of the challenge of the time time to the challenge of the challenge of the time time to the challenge of the challenge of the time time to the challenge of the challenge of

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the police reports, considered in the context of the record before us, raise questions sufficient to justify avoiding decision of the broad constitutional issues presented by affording the opportunity to the Maryland Court of Appeals to decide whether a further hearing should be directed. See Henry v. Mississippi, 379 U. S. 443.

The truism that our federal system entrusts the States with primary responsibility in the criminal area means more than merely "hands off." The States are bound by the Constitution's relevant commands but they are not limited by them. We therefore should not operate upon the assumption—espacially inappropriate in Maryland's case in light of its demonstrated concern to afford post-conviction relief paralleling that which may be afforded by federal courts in habeas corpus preceedings that state courts would not be concerned to reconsider a case in light of evidence such as we have here, particularly where the result may avoid unnecessary constitutional adjudication and minimise federal-state tensions.

We would therefore vacate the judgment of the Court of Appeals and remand to that court for further proceedings.

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trial, who then confronted the campbilities who treat in the period of the present of the presen

[&]quot;See Hunt v. Worden, 835 F. 2d 005, 941-943 (C. A. 4th Cir., 1964); Midgett v. Worden, 329 F. 2d 185 (C. A. 4th Cir., 1964), and the other creat financed in Note, 40 N. Y. U. L. Rev. 184, 198-195 (1965).

SUPREME COURT OF THE UNITED STATES

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James V. Giles et al.

Petitioners. On Writ of Certiorari to the Courts b. of Appeals of Maryland

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risels an amount lais February 20, 1967. I and also quel los controles during an amount more properties and sections.

Ma Justice Warrs, concurring with availages please

I concur in the judgment of the Court, although I am unable to join the opinion of my Brother Beausian. in my view, there was no violation the rule of Name To Minout. The argument is that at the trial the polis officers testified that the complaining witness had an police reports supplied to the Court after oral argument clearly indicate that the complaining witness had told the officers at one point that only two men had raped her. Although the fact misstated by the police at trial boars primarily upon the cradibility of the officers who testified it might be argued that in addition the false testimony bors gone relationship to the excellibility of the prosecuting witness and of the question whether both of the petitioners had in fact committed raps. But es were not overlooked by petition it trial who then confronted the con

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Concerning the testimony given by Foster as to why he was with the complaining witness on the evening of the alleged rape there can be no argument under Napue, a point made clear by the opinion of my Brother HARLAN.

Nevertheless for the reasons which follow I concur in the judgment remanding the case to the Maryland Court

of Appeals for further consideration.

Petitioners here were appellees in the Maryland Court of Appeals, having prevailed in the trial court in their post-conviction attempt to win a new trial. In the Maryland Appellate Court, they sought to sustain the judgment not only on the grounds stated by the District Court—suppression of evidence with respect to an alleged false rape claim and a suicide attempt—but on the additional grounds that the State had suppressed other evidence, including evidence with respect to the rape victim's heers testifyd, that the complaining

the trial counsel, Mr. Prescott, was questioned concerning his knowledge of the police reports.

"Q. Mr. Prescott, after your appointment as counsel for the Giles boys in this case, did you come to see me, as State's Attorney, the officers at one point that only lwfeers at expelle of

Although the fact misstated by the politic I's Krink "Q. And would you relate to His Honor what the discussion consisted of and what, if anything, I let you see and have in the

"A. You let me have your entire file, as I recall. . . .

Q! And by the entire file, did I let you read the police report both of the petitioners had in fact communication atlant these leaves were not overhooked by petiticible wo Yo A see

"The Court: Mr. Prescott, I understood you to say that Mr. Kardy, while you were preparing for the trial and before trial, let you see his complete file, including the police reports?

"The Witness: That is correct, Your Honorvil of pair infami.

"The Court: And you are satisfied that Mr. Kardy did show you the police reports, which he didn't have to do?

"The Witness: Well, I am not sure he didn't have to, but he did show them to me, Your Henor.". Transcript of Post Conviction Hearing, Vol. I, 11, 13.

reputation for promiscuity and evidence with respect to her mental condition. The Maryland Court of Appeals apparently considered it appropriate and important to dispose of these additional suppression claims. With respect to reputation for unchastity the court acknowledged the admissibility of such evidence where consent is an issue. The court held, however, that the prosecution could not be charged with withholding reputation evidence since the defense itself had ample knowledge of the promiscuous conduct of the prosecuting witness. As to her mental condition, the court cited with approval People v. Bastian, 330 Mich. 457, 47 N. W. 2d 692 (1951), apparently conceding that evidence of "nymphomania"—which the court referred to as a "type of mental illness"—was admissible in a case such as this. But the court held (1) that the prosecution could be charged only with the knowledge that the mother of the victim had at one time taken her to a psychiatrist; (2) that there was nothing in the record to show that the victim was suffering from nymphomania; and (3) that even if she was so afflicted, "there was nothing to show that this made her incompetent as a witness or that she consented to the acts for which the appellees were convicted."

Of course, the court's ultimate result unavoidably lowed from these factual determinations and it would appear that the evidence now in the record is consistent with these conclusions. But this does not end the matter in my view, if the inquiry permitted the petitioners in the trial court was not all that the Maryland law allows or that the constitution requires. And based on the record as it comes here, I am not at all sure that there has been a full airing of the suppression issue or that the petitioners are responsible for the obvious short-comings in the evidence with respect to the mental condition of the rape victim and the prosecution's knowledge

with respect to this matter. I am sufficiently unsure that I would remand for further consideration by the Maryland Court of Appeals.

To set in perspective those parts of the record which concern me, a brief summary of the facts is necessary. In chronological order, this case involves the alleged rape by petitioners, a subsequent occasion upon which the complaining witness experienced sexual intercourse with two you men (which led to the so-called false rape claim), a suicide attempt by the complaining witness followed by temporary hospitalization in a psychiatric ward, a juvenile court proceeding as a result of which the complaining witness was sent away from her home, and finally the trial at which the petitioners were convicted. While the complaining witness was hospitalized, she was subjected to a psychiatric examination by Dr. Doudoumopoulis, who related his opinion to Dr. Connor, who in turn spoke with the parents of the complaining witness. In addition, and highly relevant to the issue of suppression, the record of the juvenile court proceedings reflects the fact that Lieutenant Whalen of the Montgomery County Police Department had discussed the matter of confinement of the complaining witness with Dr. Connor and had arranged for and participated in the juvenile court hearing.

The following excerpts from the post-conviction hearing transcript are the source of my concern with the

record as it comes to us.

Dr. Connor testified that he had seen the complaining witness daily during her hospitalization following the suicide attempt.

"Q. And on the subsequent days could you tell us what part of the hospital you saw her, which ward?
"A. I saw her on A Wing, which is the psychiatric ward.

"Q. Did you request Dr. Doudoumopoulis to make a psychiatric evaluation of Miss Roberts?

"A. Yes, I did. of the second of the Flance "Q. And did he report to you his evaluation or diagnosis of her case?

"A. Yes, he did.

"Q. Did you concur with him?

"A. Yes, I did.

"Q. Could you tell us what that diagnosis or evaluation was?

"Mr. Kardy: Just a minute, Doctor. Object, Your Honor.

"The Court: Objection sustained."

Subsequently, Dr. Connor, who had not performed the psychiatric examination, was allowed to testify concerning his nonpsychiatric diagnosis of the patient, and his conclusion was "adolescent reaction." The failure of the hearing to produce, through Dr. Connor, any meaningful testimony regarding the psychiatric condition of the complaining witness might have been presaged by the testimony the same Doctor was allowed to give on deposition prior to the post-conviction hearing, the contents of which follow:

"Q. Did you see [Joyce Carol Roberts] during the hospitalization?

"A. During the hospitalization, yes.

"Q. At that time did you have occasion to speak to Lieutenant Whalen of the Montgomery County Police Department about Joyce?

"A. I spoke to someone from the Montgomery. County Police Department during that period. don't know just exactly who it was or the exact date, but I do recall talking to someone about her.

The deposition was conducted by the same judge who presided at the post-conviction hearing.

"Q. And where did that conversation take place?

"A. I believe it was in my office at 4713 Berwyn
Road, in College Park. My office was there.

"Q: Will you state the substance of that conver-

sation?

"Mr. Kardy: I object.

"The Court: The objection is sustained.

"Mr. Witt: Your Honor, we are seeking to find out what information was given to the State about the credibility of this witness.

"The Court: He has not testified that he talked to anyone from the State, he said he talked to some-

one in Montgomery County.

"Mr. Witt: Montgomery County Police Department, Your Honor.

"The Court: He said, 'to someone,' as I heard his answer.

"Mr. Witt: Can we have the answer read back?
"The Court: Doctor, can you identify the person to whom you talked?

"The Witness: No, sir; I cannot. I recall there was someone from the police department.

"Mr. Kardy: Of Montgomery County?

"The Witness: Of Montgomery County.

"The Court: Counsel, do you proffer to show that from that conversation the State's Attorney had knowledge that there was evidence suppressed which, would have been a defense to the crime?

"Mr. Witt: Yes, Your Honor.

"The Court: What specifically do you proffer to show?

'Mr. Witt: We proffer to show that the State had knowledge of this girl's psychiatric condition at the time.

"Mr. Witt: It is under Napue against Illinois. Evidence respecting the credibility of a witness which is in the possession of the State at the time of the trial and which is suppressed by State is a violation of due process.

"The Court: I will sustain the objection.

"Q. Did you at that time have occasion to speak to either or both of Joyce's parents?

"A. Well, I was speaking to her mother on frequent occasions, and I spoke to her father on one or more occasions, I don't recall how often.

"Q. And did you discuss with them what should be done for Joyce?

"A. Yes.

"Q. Will you state what was said?

"Mr. Kardy: Just a minute, Doctor. I object.

"The Court: Objection is sustained.

"Q. Did either of them tell you about any other alleged rape of Joyce?

"Mr. Kardy: I object. "The Court: Sustained.

"Q. Did any member of Joyce's family tell you about any other alleged rape of Joyce?

"Mr. Kardy: I object.

"The Court: Sustained.

"Q. In the course of your treatment of Joyce during this period, did you have occasion to call in another doctor?

oll aun Marie and and and all and

"A. Are you referring to hospitalization?

"Q. Yes.

"A. Yes, I did.

"Q. And who was that doctor?

"A. Dr. Doudoumopoulis.

"Q. Did you discuss Joyce with him after he had seen her?

Senting "A. Yes, I did no the sent the sent to the sent to

phrenie? belangua & double has a juvenile schizo-

"Mr. Kardy: Just a minute; don't answer that.

"The Court: The objection is sustained.

"Q. Did you discuss with Dr. Doudoumopoulis "what treatment Joyce should receive?"

"Mr. Kardy: I object.

"The Court: I think it is immaterial. I will sustain the objection."

Immediately after Dr. Connor's deposition was taken, Lieutenant Whalen of the Montgomery County Police Department was put under oath. Lieutenant Whalen testified that he had contacted Mr. Kardy, the prosecutor, and that they arranged for a hearing in the juvenile court in Montgomery County on September 5, 1961. The reason for seeking protective custody for the girl was that, in Whalen's words: "[T]he boys in the area were harassing the girl so bad that she [the mother] would like to get some help for the girl."

"Q. Were you present throughout that juvenile court hearing of September 5, 1961?

"A. I was in and out of the courtroom. I was not

there every second.

"Q. Let me go back a minute; isn't it a fact that prior to this hearing you had talked to Dr. Connor with respect to Joyce Roberts' mental condition?

"Mr. Kardy: I object.

"Mr. Forer: . . . Your Honor, we had Dr. Connor on the stand earlier today, and Dr. Doudoumopoulis; we were trying to lay a foundation by showing that the girl's condition was such that it would have

affected her credibility. Dr. Doudoumopoulis actually was qualified, as a qualified psychiatric expert, to say if it would have affected her credibility. It would have been relevant to whether or not she invited this intercourse or rejected it. And with Dr. Connor we also brought out whatever the doctors discovered he had told some representatives from the Montgomery County police. But Your Honor excluded our questioning designed to go into the mental condition of the girl. Now Your Honor is excluding my asking him whether he knew about it on the grounds that we have not established the significance of the mental condition.

"The Court: I will sustain the objection. I do not think it is proper in this procedure.

ndy from that at the deposition proceeding

In the course of the post-conviction hearing, the defendants also attempted to probe the relationship between the mental condition of the complaining witness and her credibility through questions put to Dr. Frederic Solomon, a qualified psychiatrist.

[&]quot;Q. Doctor, do you have an opinion about how the mental illness, which you have described, would affect the credibility of a witness about the kind of circumstances which I described, that is, an intensely personal situation in which personal motivations were involved?

[&]quot;Mr. Kardy: Object. and beautoy file grad W

[&]quot;The Court: You can answer it merely yes or no.

[&]quot;The Witness: Yes.

[&]quot;Mr. Witt: What is that opinion?"

[&]quot;Mr. Kardy: Object.
"The Court: Sustained.

[&]quot;Mr. Witt: Your Honor, I offer to prove that his opinion would be that the mental illness which he has described would substantially affect the credibility of such a person about such an incident.

[&]quot;The Court: Well, I never heard of such a rule. I sustained the objection. It's up to a jury to determine the credibility. How can we take and let a man, after a trial has occurred, come in and say the credibility was no good?" Transcript of Post Conviction Hearing, Vol. II, 64.

outs airQ Now let us go back to this juvenile court hearing in Montgomery County, September 5, 1961. Was anything said at the juvenile court hearing and about the fact that Joyce Roberts had attempted to commit suicide shortly before that date?

-oob ad Mr. Kardy ! I object of sta an abuno ? RI

any itage The Court: I will sustain the objection."

The day before the post-conviction hearing began, Dr. Doudoumopoulis, although subject to a bench warrant, had "left for Maine" for two weeks. In all fairness to the presiding judge, it should be noted that he offered to continue the hearing until the Doctor could be reached for his testimony. But on the other hand, the counsel for petitioners perhaps had no reason to expect that the course of the post-conviction hearing would run any differently from that at the deposition proceeding in advance of the hearing, where Dr. Doudoumopoulis, and the petitioners' counsel, could achieve only the following interchange, have likelihard and how sager to securing any out to

"Q. Dr. Doudoumopoulis, on or about August 26, 1961, in the course of your practice, did you have occasion to see a girl by the name of Joyce Carol are to a Roberts? Sentence in the real facts and barries and bereat in the

"A. I saw her on the 28th of August, 1961.

"Q. Where did you see her? word? which all

"A. At Prince George's Hospital.

"Q. What caused you to see her?

"Mr. Kardy: I object. Atomic A

or to this hearing you had lossed aids of his bluew and The Court: I will overrule it. I will permit that. be that the mental almass whichewenks year nove whatan-

"A. Dr. Charles D. Connor had asked me to make a psychiatric evaluation of her. has nicombit because and later a noting como a let bederant per sins

This deposition proceeding was also conducted by the same judge who presided at the post-conviction hearing.

"Q. Did you interview her? Hoy bid O'

"Ar Yes, I did not ad bluods sads at sagart

von discuss it hospitalization of Joyce L. "Q. Did you reach any conclusions about her condition?

"Mr. Kardy: Just a minute, Doctor. I object.

anne the record of the inv . "Mr. Witt: Your Honor, we are seeking to discover what the doctor's diagnosis was, and then to link it up with the knowledge of the State with respect to that condition. That is the purpose.

"The Court: The objection is sustained."

"Q. Do you know Dr. Charles Connor?

"A. Yes.

"Q. Did you discuss Joyce with him?

"A. Yes.

soft los neladiff "Q. Did you tell him your conclusions—

Now; it is a fact, is it not, a first

"Mr. Kardy: I object.

"Q. —in respect to Joyce's condition?

"Mr. Kardy: I object.

"The Court: He can answer it yes or no.

"The Witness: Yes.

"Q. Did you discuss with him what should be done for Joyce?

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"Q. Now will you tell us the discussion with respect to what should have been done with Joyce at that time?

"Mr. Kardy: I object.

"The Court: Sustained.

"Q. Did you talk to Joyce's parents?

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book additional was ten 12d anique on "A: I think it was the mother I talked to. "Q. Did you have any discussion with her with respect to what should be done for Joyce? . . . Did you discuss a hospitalization of Joyce? ... "Mr. Kardy: I object.

"The Court: The objection is sustained."

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Because the record of the juvenile court proceeding clearly indicated that psychiatric evidence concerning the complaining witness had loved from the doctors into that hearing, the record of which also reflected the presence of Lieutenant Whalen, the petitioners' counsel sought to pursue their inquiry through Mr. Lynn Adams, an officer of the juvenile court who had been instrumental in the juvenile court proceedings. This inquiry was likewise cut short:

"Q. Now, it is a fact, is it not, a Lieutenant Detective Whalen of the Montgomery County Police Department was also present at that hearing?

"A. Yes, according to my information it was.

"Q. It is a fact, is it not, that the charge against Joyce Roberts was that she was out of parental control and living in circumstances endangering her well-being?

"Mr. Kardy; Object.

"The Court: Sustained.

"Q. Was it brought out at this hearing that Joyce Roberts had attempted to commit suicide shortly before the hearing?

"Mr. Kardy: Just a minute, Mr. Adams. Object.

"The Court: Sustained.

"Q. Was it brought out at this hearing that in late August of 1961 Joyce Roberts had accused two men of raping her?

Mr. Kardy: I objectivene vant uni

"Mr. Kardy (To the Witness): Just a minute.

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"The Court: Sustained. Sustained and the land reat-ennyietien hearing

"Q. Did you speak, by telephone or otherwise, with a psychiatrist by the name of Dr. Alexander Doudoumopoulis? withoutestion reclaimed permission to make available

to weath about any repeir of the profession "Q. Did he give you any information regarding the mental condition or mental health of Joyce Roberts in this conversation that you had with him?

"A. Did he yes, regarding the mental health, yes.

"Q. What was the information that he gave you regarding Joyce Roberts' mental health in this conversation? was too bits the and satural only offer.

"Mr. Kardy: Just a minute. Object, Your Honor. "The Court: Sustained."

The presiding judge seems to have closed off Mr. Adams as a source of information on the ground that he had no other choice under Rule 922 of the Maryland Rules of Procedure governing juvenile causes. The rule specifies that: I do now month well be a livery to the contract.

"A person having a direct interest in a case may examine any part of the record thereof, except medical and case histories and other reports which the court may designate confidential. Such a person may also examine such histories and confidential reports with prior written permission of the court. The court may, however, from time to time, designate by general orders persons or agencies who may inspect any record, or specific classes of records, without additional written permission. Except as provided herein, no other person may examine any juvenile record, including the docket, without prior

written permission of the court." Md. Ann. Code, c. 900, Rule 922.

At the post-conviction hearing, the petitioners held an authorization of the juvenile court to examine the records concerning the September 5, 1961, hearing. The authorization included permission to "make available said records for use, including introduction into evidence . . . and to any persons with knowledge thereof to testify about any aspect of the proceedings . . . involving said Joyce Carol Roberts.5 The presiding judge in the post-conviction hearing was of the view that Rule 922 allowed the juvenile court only the power to make the records available for examination, not to "put it in evidence." See Volume I, Post Conviction Hearing Transcript, at 66. This, of course, does not explain why the judge himself did not examine the record, as he had expressly been authorized to do by the juvenile court. Had the judge made such an examination, he might have concluded that his decision regarding the admissibility of the record and of testimony by witnesses who had attended the hearing would require a more complete consideration of the purpose of and policies served by Rule 922. And in any event-although this is a matter of Maryland law about which I am not at all sure—the Rule would not seem to be a bar to testimeny by those who had attended the juvenile court hearing when asked questions concerning information obtained outside the juvenile court hearing. If I am correct in this regard, the Rule could not stand in the way of testimony by Dr. Connor as to his conversations with Dr. Doudoumopoulis, or as to his conversations with the Montgomery County police officer, or as to any conversations either of the doctors might have had with Mr. Lynn Adams outside the juvenile court hearing. An additional matter raises my doubts

This document is included in the record at page 274.

further about the force which Rule 922 should have had at the post-conviction hearing. The State has since supplied this Court with what is apparently the complete file and record of the September 5, 1961, juvenile court proceedings involving the complaining witness. The State apparently no longer considers Rule 922 a bar to judicial consideration of these items. I do not wish to suggest that the presiding judge's exclusion of the juvenile court record, and of possible testimony of Adams, Whalen, Connor, and Doudoumopoulis was necessarily incorrect. But the duty to make that decision and the right to make it in the first instance belongs to the Maryland court, and my point simply is that the circumstances of the post-conviction hearing in this case compel a more complete consideration of the issue.

There is another matter for the consideration of the Maryland court: the prosecuting attorney of Montgomery County was not charged with the knowledge of Prince Georges County officers but he was charged with what the police officers of Montgomery County knew. Was he also charged with the knowledge of other Montgomery County officials such as Lynn Adams, and, to the extent of their involvement with Montgomery County agencies, Dr. Connor and Dr. Doudoumopoulis?

In the end, any allegation of suppression boils down to an assessment of what the State knows at trial in comparison to the knowledge held by the defense. It would seem that the Maryland Court of Appeals would reverse as unconstitutional a conviction in a trial that included suppression of evidence tending to prove nymphomania, or more comprehensively, suppression of evidence concerning the mental condition of the complaining witness and the interrelated issues of her consent and credibility. If such is the case, it would be helpful to have the Maryland Court of Appeals' views as to whether on this record the petitioners have been afforded a full and fair hearing on this issue.

SUPREME COURT OF THE UNITED STATES

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James V. Giles et al.,) sandin administration sand sand sand

Petitioners, On Writ of Certiorari to the Court of Appeals of Maryland

State of Maryland.

[February 20, 1967.]

Mr. JUSTICE FORTAS, concurring in the judgment.

I concur in the Court's judgment in this immensely troubling case, but I do so for the reasons which led the Montgomery County Circuit Court to order a new trial.

On petitioners' motion for post-conviction relief, Judge Moorman of the Circuit Court sustained the claim that the prosecution had violated their federally protected right to due process of law when it failed to disclose to defense counsel evidence, known to the prosecution, concerning two incidents which occurred about one month after the crime charged to them and four months prior to trial. These incidents were: (1) the prosecutrix' sexual encounter with two boys at a party, followed by the filing and eventual dropping of a rape charge; and (2) her attempted suicide within hours of the foregoing incident and her ensuing hospitalization for psychiatric examination. The Circuit Court ruled that this information "could be reasonably considered admissible and useful to the defense," that in consequence the prosecution was under a duty to disclose, and that its omission to do so required a new trial.

The Maryland Court of Appeals reversed. It held that, even if admissible, the evidence in question was insufficiently "exculpatory" to warrant a new trial. The attempted suicide was shunted aside on the ground that its "probative value" was not such as to affect either the competence or credibility of the prosecutrix as a witness.

Both it and the rape claim were disposed of on the assertion that "specific acts of misconduct" are not admissible to impeach credibility, and that "the only possible use of the facts surrounding the alleged rape claim would be for purposes of showing the unchastity of the prosecutrix, a fact that was already known to the defense at the time of the rape trial."

Justices Oppenheimer and Hammond dissented. They noted that the alleged rape claim and its abandonment might well have been useful in corroborating the petitioners' account of what happened, that no Maryland evidentiary rule rendered inadmissible in a rape prosecution evidence that the prosecutrix suffered from a mental or emotional disturbance short of "insanity," and that in any event these bits of information might have furnished the defense with important leads to other and more potent evidence. The dissenters asserted that the majority erroneously substituted its appraisal of the weight to be attached to the suppressed evidence for a jury's possible evaluation, and that it erred in applying too stringent a test of admissibility.

I do not agree that the State may be excused from its duty to disclose material facts known to it prior to trial solely because of a conclusion that it would not be admissible at trial.1 The State's obligation is not to convict. but to see that, so far as possible, truth emerges. is also the ultimate statement of its responsibility to provide a fair trial under the Due Process Clause of the Fourteenth Amendment. No respectable interest of the State is served by its concealment of information which

In Griffin v. United States, 336 U. S. 704, 707-709 (1949), this Court remanded a case for reconsideration of a ruling that certain evidence withheld by the prosecution was inadmissible. On remand, a new rule of admissibility was formulated and a new trial ordered. Griffin v. United States, - U. S. App. D. C. -, 183 F. 2d 990 competence or credibility of the prosecutrix as a

is material, generously conceived, to the case, including all possible defenses.

This is not to say that convictions ought to be reversed on the ground that information merely repetitious, cumulative, or embellishing of facts otherwise known to the defense or presented to the court, or without importance to the defense for purposes of the preparation of the case or for trial was not disclosed to defense counsel. It is not to say that the State has an obligation to communicate preliminary, challenged, or speculative information. But this is not that case. Petitioners were on trial for their lives. The information was specific, factual, and concrete, although its implications may be highly debatable. The charge was rape, and although the circumstances of this case seem to negate the possibility of consent, the information which the State withheld was directly related to that defense. Petitioners' fate turned on whether the jury believed their story that the prosecutrix had consented, rather than her claim that she had been raped. In this context, it was a violation of due process of law for the prosecution to withhold evidence that a month after the crime of which petitioners were accused the prosecutrix had intercourse with two men in circumstances suggesting consent on her part, and that she told a policeman-but later retracted the charge—that they had raped her. The defense should have been advised of her suicide attempt and commitment for psychiatric observation, for even if these should be construed as merely products of the savage mistreatment of the girl by petitioners, rather than as indicating a question as to the girl's credibility; the defense was entitled to know.

The story of the prosecutrix is a tragic one. But our total lack of sympathy for the kind of physical assault which is involved here may not lead us to condone state suppression of information which might be useful to the defense.

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With regret but under compulsion of the nature and impact of the error committed, I would vacate the judgment of conviction and require the case to be retried. In view of the conclusions of the majority, however, I concur in the judgment of the Court sending this case back to the Court of Appeals for reconsideration.

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ADDENDUM: My Brother HARLAN has addressed a section of his dissent to my concurring opinion. This discloses a basic difference between us with respect to the State's responsibility under the fair trial requirement of the Fourteenth Amendment. I believe that deliberate concealment and nondisclosure by the State are not to be distinguished in principle from misrepresentation. This Court so held in Brady v. Maryland, 373 U. S. 83 (1963). Mr. JUSTICE HARLAN concedes that the State may not knowingly use perjured testimony or allow it to remain uncorrected. He asserts that this satisfies "in full" the requirements of the Fourteenth Amendment, and "an extension of these principles is ... neither necessary nor advisable." This suggests that the State is never obligated to take the initiative to disclose evidence unless its nature is such as to impeach evidence that the State has offered. I assume that MR. JUSTICE HARLAN would apply this principle, even though the information might, in the hands of defense counsel, spell the difference between death and exoneration of the defendant. I cannot subscribe to this. A criminal trial is not a game in which the State's function is to outwit and entrap its quarry. The State's pursuit is justice, not a victim. If it has in its exclusive possession specific. concrete evidence which is not merely cumulative or embellishing and which may exonerate the defendant or be of material importance to the defense-regardless of whether it relates to testimony which the State has caused to be given at the trial—the State is obliged to

bring it to the attention of the court and the defense. For example, let us assume that the State possesses information that blood was found on the victim, and that this blood is of a type which does not match that of the accused or of the victim. Let us assume that no related testimony was offered by the State. I understand my Brother Harlan's comments to mean that he would not require the State to disclose this information. He would apparently regard Miller v. Pate, U. S. as the outer limit of the State's duty. There the prosecution dramatically used a pair of shorts, misrepresented as saturated with blood, to secure a conviction. I cannot acquiesce that this is the end of the State's duty under the Constitution. Nondisclosure deliberate withholding-of important information of the type described, which is in the exclusive possession of the State is, in my judgment, not reconcilable with the concept of a fair trial and with the Due Process Clause. I can readily see that differences of opinion might exist as to whether the nature of particular evidence is such that nondisclosure of it should result in setting aside a conviction. But I do not accept the notion that only where the effect of withholding evidence is to allow perjured testimony to stand uncorrected is there a duty to disclose. In my view, a supportable conviction requires something more than that the State did not lie. It implies that the prosecution has been fair and honest and that the State has disclosed all information known to it which may have a crucial or important effect on the outcome.

The newly amended Rule 16 of the Federal Rules of Criminal Procedure has little to do with the matter now before the Court. On its face, the Rule is directed to the relatively limited problem of pretrial discovery and inspection in the federal courts. Whether Rule 16 is dequate even for its purposes is the subject of differences of opinion. But it does not purport to exhaust the prosecution's duty. Mr. JUSTICE HARLAN apparently

finds no inconsistency between proscription of the prosecution's knowing use or acquiescence in the use of perjured testimony and Rule 16's silence on that subject. I find none in the requirement, recognized by this Court in Brady v. Maryland, supra, that the State apprise the defendant of information of the sort described herein, and the Rule's omission of such a rule. My point relates not to the defendant's discovery of the prosecution's case for purposes of preparation or avoidance of surprise, which is dealt with in Rule 16, but with the State's constitutional duty, as I see it, voluntarily to disclose material in its exclusive possession which is exonerative or helpful to the defense—which the State will not affirmatively use to prove guilt- and which it should not conceal. Brady involved neither the knowing use of perjured testimony nor acquiescence in its use. Nevertheless, both the Maryland Court of Appeals and this Court concluded that the prosecutor's conduct in withholding information material to guilt or punishment, information which defense counsel had unsuccessfully requested, violated due process. Although this Court included in its statement of the controlling principle a reference to counsel's request-"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. ... " -I see no reason to make the result turn on the adventitious circumstance of a request. If the defense does not know of the existence of the evidence, it may not be able to request its production. A murder trial-indeed any criminal proceeding-is not a sporting event se de da la cet van dan distribitat de sticht alericales reda

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^{*} Alcorta v. Texas, 355 U. S. 28 (1957); Napue v. Illinois, 360 U. S. 264 (1959); Mooney v. Holohan, 294 U. S. 103 (1934). Jack 373 OU. S., at 87 Ed Lore tember de

SUPREME COURT OF THE UNITED STATES

No. 27.—OCTOBER TERM, 1966.

James V. Giles et al.,
Petitioners, On Writ of Certiorari to the C

Petitioners, On Writ of Certiorari to the Court of Appeals of Maryland.

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State of Maryland.

[February 20, 1967.]

Mr. Justice Harlan, whom Mr. Justice Black, Mr. Justice Clark and Mr. Justice Stewart join, dissenting.

The disposition of this case, the product of three opinions, none of which commands the votes of a majority of the Court, is wholly out of keeping with the constitutional limitations upon this Court's role in the review of state criminal cases. For reasons that follow, I dissent.

On the basis of the trial record, it would be difficult to imagine charges more convincingly proved than were those against these three youths for raping this teenage girl.' Following conviction, information came to light which seriously reflected on the sexual habits of the girl and on the stability of her character. These revelations were made the basis of a state post-conviction proceeding, premised on the claim that in failing to disclose these data at the time of trial the prosecution had been guilty of a deliberate suppression of material evidence and the knowing use of perjured testimony. The post-

[&]quot;Consent" is of course the conventional defense in rape cases. In light of the forcible entry into the victim's car, the assault upon her companion, and her flight into the woods, it would have been extraordinary for the jury to have believed that this girl freely invited these youths to have sexual relations with her, still more that the petitioner John Giles, who was the first to pursue her into the woods (albeit allegedly not knowing that he was pursuing a female), refused the "invitation."

conviction judge found against those claims, but nonetheless ordered a new trial, holding that the data, which he deemed would have been admissible and useful to the defense, should have been disclosed by the authorities. The Court of Appeals of Maryland, holding as a matter of state law that this material was not such as to justify a new trial, reversed. This Court, without finding any constitutional flaw in the state proceedings, and indeed expressly recognizing that upon the facts as found by the state courts, petitioners' nondisclosure claim gives rise to no federal question under existing law, now returns the case to the Maryland Court of Appeals for what amounts to nothing more than reconsideration.

The plurality and one of the concurring opinions urge entirely different reasons for remanding the case in this fashion, and will thus oblige the courts of Maryland to reconsider a series of wholly unrelated issues. rality opinion and my Brother WHITE's concurring opinion have only two common denominators: neither can identify any federal basis for this disposition, and both are concerned with questions which have been repeatedly considered by the state courts. Each of the three opinions requires discrete treatment, but I have concluded. for the reasons which follow, that none of them offers any basis on which the Court may properly return this case to the Maryland courts.

I turn first to the reasons advanced by the plurality opinion. The unusual disposition made of this case by the plurality is bottomed upon materials entirely outside the record before us, furnished to this Court after the case was submitted, under the leverage of inquiries put from the bench during the argument. The materials are two pre-indictment police reports, the Montgomery County Officers' Report and the Supplementary Offense Report. It seems to me entirely improper for this Court

to "retry" state criminal cases in its own courtroom, and then to return them for reconsideration in light of materials "discovered" outside the record during that process. Even apart from that regrettable practice, the remand of this case is the more remarkable because the materials on which the plurality relies are not in any sense newly discovered. The fact is that these police reports have played a significant role throughout the state court proceedings. They were made available to defense counsel at the original trial stage. They were given to and considered by the trial judge at the time of sentence. And although demanded by the new defense counsel in the post-conviction proceeding, their production was denied under a state procedural rule which apparently was not contested in the state appeal, and which is in no way now questioned by this Court from a federal standpoint. In consequence, the ultimate rationale for the plurality's disposition of the case is itself specious.

The use now made of these police reports is equally unsatisfactory. The discrepancies which the plurality finds between these reports and the trial testimony relate to two episodes. First, the girl, Joyce, and her companion, Foster, apparently initially told the police that they were having sexual intercourse in their car when they noticed the presence of the other car, whereas at trial Foster intimated that he and the girl were simply sitting in the rear seat. He denied elsewhere that he and his friends had brought Joyce out to the spot to have sexual relations with her. Second, one of the police reports is construed to suggest that Joyce had said that John Giles did not penetrate her, whereas her trial testimony was that all three men had raped her. The plurality argues that these discrepancies, if known to the defense, might have been used to establish the girl's reputation for promiscuity, to attack the credibility of prosecution

witnesses, and possibly to exonerate petitioner John Giles entirely. It even suggests that the defense might have shown a deliberate suppression of evidence or a conscious failure to correct perjured testimony.

The short answer to all this is, of course, that the record makes plain that defense counsel at the trial was given access to these police reports's and thus must be taken to have been aware of the very discrepancies of which the plurality now undertakes to make so much. There is no basis whatever in the evidence before us for the plurality's intimation that the reports seen by counsel may not have been those given to this Court or for its thinly veiled suggestion that in not making use of the report counsel may have been incompetent or worse.

Beyond this, a more careful examination than the plurality has given these reports and the record will itself dissipate the aura of suspicion and conjecture with which this case has now been surrounded. The plurality first suggests that perjured testimony may have been knowingly utilized by the prosecution to establish penetration of the girl by John Giles. Joyce initially testified at a pretrial hearing that only Johnson and James Giles had intercourse with her. Later in the same hearing. she included John Giles, apparently with the explanation that she had first believed that rape requires emission as well as penetration. At trial she testified very specifically that John Giles had effected penetration. On cross, she conceded that her first accounts both to the

^{*}Counsel so stated three times at the post-conviction proceeding, twice under the judge's questioning. This colloquy has been reprinted in my Brother WHITE's concurring opinion, supra.

We do not have before us the transcript of the preliminary hearing. An uncontested account of Joyce's testimony was however given at the post-conviction proceeding. See Transcript of Record 270-272. This section of the second the confidence one to villedine to see entirely improper for this Couri

police and at the preliminary hearing indicated that only two men had intercourse with her. She again suggested that she had been confused. In contrast, the police officers testified at trial that Joyce had said in questioning on July 21 that John Giles had intercourse with her. The supposed inconsistencies among all these accounts were plain both to defense counsel and to the jury.

Petitioners argued at the post-conviction proceeding that the police testimony was perjured, and that Joyce had initially said that John Giles did not attack her. They offered, in addition to Joyce's own admissions at trial, statements from petitioners' father, mother, and sister that a policeman had first mentioned only two assailants to them. In a deposition hearing, Joyce said that she did not recall ever conceding at trial that only two men had intercourse with her. Judge Moorman concluded that Joyce's terminological confusion adequately explained the supposed discrepancies with the police testimony, Although petitioners have not argued this issue here, the plurality now points to the supplementary report to suggest again that the police evidence might have been perjured, and remands for yet another hearing on that issued beautype confusion of the traff beautypoten

It seems apparent that the references to this issue in the supplementary report are entirely equivocal. The report contains only three references to Joyce's statements on this question. First, Joyce is reported to have replied, when asked how many had intercourse with her, that "The bigger one [John] tried first, then the other two." Again, the statement is attributed to her, in the third person, that John "tried to have intercourse with her but was unable to do so." Finally, she is reported to have said that John Giles "tried to insert" but "could

^{*}Counsel made an extended effort to discredit Joyce's testimony based on the alleged inconsistencies in her various accounts. See Transcript of Record 62-64.

not get" an erection: The report indicates that John Giles was the first to begin to remove Joyce's clothing, that he kissed her, and that he "tried" for some 10 minutes.

It must first be plain that although these references are brief and imprecise, nothing in them necessarily excludes the conclusion that John Giles achieved penetration, however slight. Further, it must be recognized that the form and language of the supplementary report indicate quite clearly that it was prepared rapidly, under the urgency of the events, and without any expectation that its every word would now be weighed and balanced. Little wonder that the plurality's diligent pursuit of uncertainty has brought to earth phrases which, so it supposes, permit some room for ambiguity.

Finally, it must be remembered that in the report, at the pretrial hearing, and at the trial itself, the police. the witnesses, and even counsel employed interchangeably various terms of very dissimilar meaning to describe the acts committed upon the girl by the defendants. The post-conviction proceeding court expressly found that Joyce for one was confused by this elusive terminology, and that this confusion explained any discrepancies in her various accounts of these events. This finding was not disturbed or even questioned by the Maryland Court of Appeals. Nonetheless, the plurality attempts to escape it with the suggestion, surrounded by cautious disclaimers, that it may possibly have been mistaken. The plurality offers three reasons for this suggestion. It first intimates that the finding may be mistaken because the State proffered this explanation only at the postconviction proceeding. This is entirely unpersuasive; Jovce's confusion was apparent at least as early as the

It is important to note that the supplementary report does not, contrary to the apparent suggestion in the plurality opinion, state that John Giles "failed to "insert."

original preliminary hearing, and was not there offered by the State as an explanation, but instead became obvious to those present simply from the terms of Joyce's testimony. The plurality next suggests that Joyce at trial expressed confusion only as to the names of her assailants, and not about this terminology. This is twice deficient: it ignores that the terms of Joyce's testimony were perfectly well known to the state courts which made and accepted the finding, and it is bottomed on an unreasonable construction of the testimony.

Lastly, the plurality contends that Joyce is not shown by the supplementary report to have been confused. There are two obvious answers. First, this assumes that the report precisely reproduces the words used by Joyce herself to describe these events, and that these words may therefore be sifted and weighed to establish Joyce's familiarity with this terminology. This is unsupported by the report itself, which contains no formal statements, and is instead an informal jumble of undigested information collected by the police as they conducted their investigation. At no point can the reader be entirely certain whether its words are the witness' or those selected by the police interrogators to digest the information given them. Finally, the plurality overlooks that there is uncontested testimony that Joyce was plainly and pertinently confused at the preliminary hearing. The plurality's speculation that she may or may not have been confused at one stage of this lengthy proceeding can scarcely vitiate the firm finding of the Maryland courts that she was confused at another and more crucial

[&]quot;Joyce did not simply suggest that she had been confused about the names of her assailants. Under defense counsel's persistent crossexamination she repeatedly affirmed that she was telling the full truth, and that she did not know "what I thought" at the time of her earlier accounts. Given her age and circumstances, this is scarcely improbable.

stage, and that this confusion explained any discrepancies in her accounts of these events. In sum, I find the plurality's oblique efforts to cast doubt on the finding of the state courts entirely unpersuasive.

Moreover, these references in the supplementary report must be viewed in light of the other police report furnished this Court; the Montgomery County Officers' Report. That report makes quite clear that Joyce indicated at the scene that John Giles "had entered her." The plurality seeks to explain the terms of this report with two suggestions. First, it intimates that the report may be unreliable because it is a summary of Joyce's statements "immediately after the incident." I should have thought that it would therefore be all the more important. most, the plurality's intimation is an acknowledgment of the weaknesses of both reports. Neither report was intended to serve as a formal and precise record; it is therefore extraordinarily hazardous to pyramid, as the plurality has done, hypotheses upon strained constructions of the reports' most abbreviated references. This simply re-emphasizes the wisdom of the State's exclusionary rule, and the corresponding impropriety of the plurality's circumvention of that rule. Second, the plurality suggests that the report leaves unexplained the police testimony that Joyce had said that all three men had intercourse with her. This assumes first that the words "gave up" in the report indicate that Joyce meant that James Giles did not penetrate, when in light of the other accounts given by both James Giles and Joyce, it could only have meant that he did not reach emission. More important, the plurality overlooks that the only questions which have ever

Montgomery County Officers' Report 1. The report indicates that Joyce said "two of the . . . males had entered her and . . . the third had tried but gave up when he saw lights coming." In the context of the other evidence the third man could only have been James Giles.

been even intimated about whether any of the three youths failed to penetrate the girl center entirely on John Giles, and this is a plain statement in the police reports that Joyce had informed the police at least once that John Giles penetrated her. The plurality opinion cannot, and does not, deny that this is the most unequivocal reference in either report to John's actions, and that it makes plain that Joyce reported that John had penetrated her. Given the ambiguity of the references to John Giles in the supplementary report, Joyce's clear statement in the Officers' Report that John Giles had penetrated, and the no less plain statements in the supplementary report from Joyce, James Giles and Johnson that James and Johnson also penetrated, I am again unable to understand how it can be thought that there might be some basis for the attribution of perjury on this score to the police witnesses."

The asserted discrepancies among the various accounts given of John Giles' participation by Joyce and the other prosecution witnesses have been forcefully argued at each stage of this case, they have been painstakingly considered by the state courts, and I can see no warrant for inviting those courts to examine the issue anew.

The plurality next suggests that the prosecution may also have been privy to the use of perjured testimony or guilty of a deliberate suppression of evidence in relation to what the girl and Foster were doing in the car just before their assailants came upon them. This is entirely insubstantial. Foster and the girl were never directly asked at trial, and did not volunteer, to describe what they had done while awaiting the return of their friends. They were not asked if they had intercourse. The ques-

The plurality's diversionary succession that Sergeant Duvall's testimony presents difficulties is wholly unpersuasive. His inexplicable failure to describe Joyce's statements to him served only to weaken the State's case, and certainly did not in any fashion prajudice petitioners. It offers no basis on which they would be entitled to relief.

was first asked "What did you three boys take Joyce out there for that night?" and replied "I told you we were going to meet some friends up there and go swimming." The next question was "You didn't take her out there to have sexual relations with her, yourself, did you?" and Foster replied "No." It would doubtless have been more forthright had Foster interjected that, whatever his original expectations, they had in fact had relations; none-theless, his explanation was an adequate response to the precise question asked. In short, although the evidence was as to this point incomplete, it was, so far as it went, consistent with the police report.

I do not see how it can be suggested that the prosecutor's conduct in this instance was constitutionally vulnerable. First and foremost, the contents of the police reports on this episode were made available to the defense, and counsel elected to make nothing of them. Second, the omitted fact in Foster's testimony could not have had "an effect on the outcome of the trial." Napue v. Illinois, 360 U.S. 264, 272. Initially, it is very doubtful that this evidence would have been admissible at trial. Under the law of Maryland, specific acts of misconduct are not admissible to impeach a witness' credibility. Rau v. State, 133 Md. 613, 105 A. 867. Further, since the evidence at trial was merely silent on these issues, and did not include inconsistent statements, this evidence presumably would not have been admissible on that basis to impeach the credibility of these witnesses. Finally, although Maryland permits the admission of evidence of a prosecutrix' general reputation for immorality, it does not permit evidence of specific acts of intercourse. Shartzer v. State, 63 Md. 149; Humphreys v. State, 227 Md. 115, 175 A. 2d 777. The Court of Appeals of Maryland has in this very case plainly said that "a prosecutrix canot be asked whether she had previously had inter-

course with a person other than the accused." Giles v. State, 229 Md. 370, 380, 183 A. 2d 359, 363. The evidence with which the plurality is concerned therefore cannot "reasonably be considered admissible," Griffin v. United States, 87 U. S. App. D. C. 172, 175, 183 F. 2d 990, 993, under the law of Maryland. Far more important from a federal standpoint, evidence of Foster's relations with the girl, even if admissible, could not have been substantially relevant to the principal factual issues at the trial. Its omission did not discolor the meaning of controlling facts, as did the episode involved in Alcorta v. Texas, 355 U.S. 28; nor did it measurably strengthen a witness' credibility, as did the one involved in Napue v. Illinois, 360 U. S. 284. It would at most have given the defense another inconclusive intimation of Joyce's promiscuity, and this could scarcely have sufficed to change the trial's outcome a whome trained by garry autopour remaind president

The plurality ultimately seeks to justify its disposition of this case in terms of the rules by which this Court has given recognition to the different roles played under the Constitution by federal and state courts. These efforts are entirely unpersuasive. In essence, the plurality has first brought these police reports into the case through an informal discovery rule of its own creation which flies into the face of an unassailed state rule which exeluded the reports, and now has invited the state courts to reconsider the case unrestricted by the local rule and not confined to the "Constitution's relevant commands." This scarcely fits the plurality's professed objective to "minimise federal-state tensions." And plainly this course finds no support in cases in which the Court has remanded for further consideration in light of a supervening event. Nothing here is remotely analogous to the change in state law that occurred in Bell v. Maryland, 378 U.S. 226, or to the intervening judgments of this Court that took place in Patterson v. Alabama,

294 U. S. 600, and in Dorchy v. Kansas, 264 U. S. 286. What is now done is explicable only on the premise that this Court possesses some sort of supervisory power over state courts, a premise which of course traverses the most fundamental axioms of our federal system. dinglet the law of Maryland feet an aune important from

a traing bunda lambal a The rationale offered for remand by my Brother WHITE's concurring opinion is equally unsatisfactory. At bottom, that rationale consists of the supposition that the presiding judge at the state post-conviction proceeding may possibly have misconstrued applicable Maryland law, and may therefore have improperly excluded testimony relevant to the mental condition of the prosecuting witness, My Brother WHITE does not suggest, as I think he cannot, that any of the rulings which he suspects to have been erroneous were deficient under any known federal standard, All of them at most involve, even under his premises, misapplications of Maryland law. Each of these rulings was plain on the face of the record presented to, and carefully considered by, the Maryland Court of Appeals; all the materials pertinent to the evaluation of these rulings were before that court at the time of its review. And lower was well formation as

The court did not, of course, explicitly determine the various questions now posed, but it did, as my Brother WHITE acknowledges, examine the record to decide whether Joyce might have been suffering from mental illness, or whether she was otherwise incompetent as a witness. Such an examination must inevitably have obliged the court to assess the very rulings and restrictions which it must now reassess upon remand. Despite this neither the majority nor the dissenting opinion below expressed any doubt that these rulings were entirely correct. At a minimum, a remand thus needlessly prolongs an already protracted case; unfortunately, it may

also appear to endorse the substitution of the speculations of this Court on the content of state law for the conclusions of the State's highest court, as basis for the return of a case to the state courts for reconsideration.

In any event, the hesitations expressed by the concurring opinion about the scope of the evidence concerning Joyce's mental condition appear unwarranted on the record before us. The record makes plain that the court at the post-conviction proceeding permitted the admission of substantially more evidence on this issue than the concurring opinion might be taken to suggest. First, the presiding judge permitted Dr. Connor, the attending physician, to state his diagnosis of Joyce's mental condition. In addition, Dr. Connor was allowed to indicate that he agreed with the diagnosis described to him by the consulting physician, Dr. Doudoumopoulis. Dr. Connor . was not, as the concurring opinion notes, permitted to describe that diagnosis, but the court supplemented its ruling with the statement to defense counsel that "I would admit it if you put it in the right manner." Both Dr. Connor and Dr. Doudoumopoulis were allowed in a deposition hearing to state whether they had discussed Joyce's condition with various officials of Prince Georges and Montgomery Counties. Further, the court permitted another psychiatrist, Dr. Solomon, to state, in reply to a hypothetical question asked by defense counsel, his opinion of the mental condition of a girl in Joyce's circumstances. In addition, Dr. Solomon was permitted to describe the basis for his views, to offer his opinion as to what her mental condition might have been some three months later (the interval before the trial in this case), and to state that a girl in these circumstances warranted a psychiatric examination. Dr. Solomon was prevented from speculating only whether this condition might have affected the girl's credibility as a witness, an issue, the court noted, which is for the jury, and not an expert

witness, to determine. Finally, petitioners adduced very substantial evidence of Joyce's sexual history, all of which was pertinent to the court's determination whether she

might have been suffering from mental illness.

Perhaps more evidence of Joyce's mental condition, and of the knowledge of Montgomery County authorities of that condition, could conceivably have been introduced: but it is true of all criminal prosecutions, federal and state, that some fragments of fact broadly pertinent to the issues of the trial do not reach the record. In any event, the petitioners themselves have apparently never challenged any of these rulings either before the Maryland Court of Appeals or in this Court. I can find no basis on the record before us for remanding this case simply in the hope that rulings of state law may now be held to have been improper, and thus that unknown additional evidence, which may or may not be pertinent and substantial, may then be admitted. This practice is. warranted neither by the facts of this case nor by the role given to this Court by the Constitution in the review of state criminal convictions.

III.

My Brother FORTAS' proposed resolution of the case is. with great respect, no more satisfactory, although he would, to be sure, base its disposition upon an asserted federal question. His reasoning, as I see it, rests at bottom upon quite fundamental objections to the character and balance of our adversary system of criminal justice. Neither those objections nor the conclusions which stem from them form any part of the disposition made of this case, in which he joins; it would accordingly be inappropriate for me to respond in more than relatively summary fashion. I content myself, therefore, with outlining the reasons why I cannot subscribe to my Brother Fortas' approach.

As I understand him, my Brother Forras believes that state prosecuting officials are compelled by the Fourteenth Amendment to disclose to defense counsel any information "which is material, generously conceived, to the case, including all possible defenses." This would include all information which is "exonerative or helpful." This standard would demand markedly broader disclosures than this Court has ever held the Fourteenth Amendment to require. The Court has held since Mooney v. Holohan, 294 U. S. 103, that a State's knowing use of perjured testimony denies a fair trial to the accused. Mooney has been understood to include cases in which a State knowingly permits false testimony to remain uncorrected. Alcorta v. Texas, 355 U. S. 28; Napue v. Illinois, 360 U. S. 264. The standard applied in such cases has been whether the testimony "may have had an effect upon the outcome of the trial." Napue v. Illinois, supra, at 272. These cases were very recently followed and applied in Miller v. Pate, -U. S. Apart from dicts in Brady v. Maryland, 373 U. S. 83, the Court has never gone further. Nor, in my view, does the Constitution demand more. This standard is well calculated to prevent the kinds of prosecutorial misconduct which vitiate the very basis of our adversary system, and yet to provide a firm line which halts short of broad, constitutionally required, discovery rules. It both guarantees the fundamental fairness of state criminal trials, thereby satisfying in full the requirements of the Fourteenth Amendment, and preserves intact the States' ultimate authority for the conduct of their systems of criminal justice. None of these advantages adhere to the standard suggested by my Brother

[&]quot;I cannot agree that this Court in Brady extended Mooney in any fashion. The language in Brady upon which my Brother Forms relies was quite plainly "wholly advisory." Brady v. Maryland, supra, at 92 (separate opinion of Whire, J.).

FORTAS. His reasoning must inevitably result in the imposition upon the States through the Constitution of broad discovery rules. Those rules would entirely alter the character and balance of our present systems of criminal justice.

The extraordinary breadth of the standard apparently urged by Mr. Justice Fortas becomes more plain when that standard is measured against Rule 16 of the Federal Rules of Criminal Procedure, applicable in federal criminal trials. Discovery under Rule 16, even as now amended, is restricted by a number of carefully drawn limitations, each intended to "guard against possible abuses." Notes of the Advisory Committee on Rules, 8 Moore Federal Practice [16.07[2]. The defendant is permitted only to obtain certain categories of materials, and he must in each case first move the court for their production. These limitations fall far short of the standard urged by my Brother Fortas. Under his view

slowed and applied in Miller

¹⁰ In substance, Rule 16 provides that upon the motion of a defendant a court may permit the defendant to inspect and copy "statements or confessions made by the defendant," the results of physical or mental examinations and of "scientific tests or experiments," and the defendant's testimony before a grand jury. Further, the court may, upon a defendant's motion and upon a showing of materiality and reasonableness, permit the defendant to inspect and copy or photograph "books, papers, documents, tangible objects, buildings or places, or copies or portions thereof " The Rule expressly does not authorise the discovery or inspection of "internal government documents made by government agents" in connection with the case, or of statements "made by government witnesses or prospective government witnesses . . . to agents of the government ... " Other portions of Rule 16 permit a court to make such disclosures conditional upon disclosures by the defendant to the Government, to prescribe the time, place, and manner of discovery, and to make suitable protective orders. Finally, the Rule creates a continuing duty to disclose additional similar materials obtained after compliance with an order issued under the Rule, and permits the imposition of sanctions for failure to satisfy that duty.

the information obtainable by the defendant could not be restricted by its character or source; failure to disclose could be justified, post hoc, only if the information cannot be deemed "material," generously judged. Nor could the defendant be obliged to demand disclosure; as the concurring opinion emphasizes, the burden must instead be placed upon the prosecutor, on threat of subsequent reversal of any conviction, spontaneously to proffer all that might prove "helpful" to the defense. The effect which the rule urged here would thus have on this federal and similar state discovery rules would be entirely unlike that of Mooney and the cases which stem from it. Mooney simply imposes sanctions upon specified forms of prosecutorial misconduct; Mr. Justice FORTAS' rule would in contrast create wide constitutional obligations to disclose which, whether operative before or during trial, would entirely swallow the more narrow discovery rules which now prevail even in federal effirm the judgment of the Court of Appeal glairs lanimiro

Issues of the obligatory disclosure of information ultimately raise fundamental questions of the proper nature and characteristics of the criminal trial. These questions surely are entirely too important for this Court to implant in our laws by constitutional decree answers which, without full study, might appear warranted in a particular case. There are few areas which call more for prudent experimentation and continuing study. I can find nothing either in the Constitution or in this case which would compel, or justify, the imposition upon the States of the very broad disclosure rule now proposed.

IV.

The unarticulated basis of today's disposition, and of the disparate reasons which accompany it, is quite evidently nothing more than the Court's uneasiness with these convictions, engendered by post-trial indications of the promiscuity of this unfortunate girl. Unable to discover a constitutional infirmity and unwilling to affirm the convictions, the Court simply returns the case to the Maryland Court of Appeals, in hopes that, despite the plurality's repeated disclaimers, that court will share the Court's discomfort and discover a formula under which these convictions can be reversed. The Court is unable even to agree upon a state law basis with which to explain its remand. I cannot join such a disposition. We on this bench are not free to disturb a state conviction simply for reasons that might be permissible were we sitting on the state court of last resort. Nor are we free to interject our individual sympathies into the administration of state criminal justice. We are instead constrained to remain within the perimeter drawn for this Court by the Constitution.

I cannot find a tenable constitutional ground on which these convictions could be disturbed, and would therefore affirm the judgment of the Court of Appeals of Maryland.

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